

***United States Court of Appeals
for the Second Circuit***



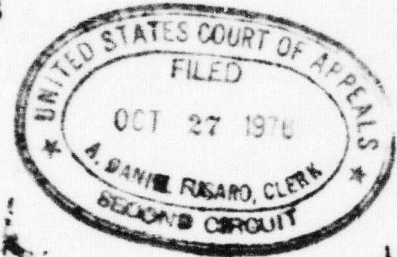
**APPELLANT'S
APPENDIX**

PAGINATION AS IN ORIGINAL COPY

76-7340

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

APPELLANTS' APPENDIX



DISTRICT COURT (CIV. NO. B-947)

EDMOND PFOTZER AND E. JOHN PFOTZER, ETC.,
Plaintiffs-Appellants,

v.

AMERCOAT CORPORATION AND AMERON, INC.,
Defendants-Appellees.

DOCKET NO. B-947

APPEAL FROM U.S.D.C. CONNECTICUT RULING DENYING
PLAINTIFFS' MOTION TO SET ASIDE STIPULATION OF
DISMISSAL.

Sat below: NEWMAN, D.J.

Edmond Pfozter and E. John Pfozter

Appellants pro se

P.O. Box 987

Wilmington, Delaware 19899

Tel: (302) 571-0595

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

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APPENDIX

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

SEC. 1-RELEVANT DOCKET ENTRIES

JON

847

Jury demand date: 12/11/73 by plaintiff B
and 8/20/74 by plaintiff

la

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
EDMOND PFOTZER, BY E. JOHN PFOTZER, HIS ATTORNEY-IN-FACT, AND E. JOHN PFOTZER, CO-PARTNERS TRADING AS E. AND E. J. PFOTZER	For plaintiff: Edmond Pfozter, pro se E. John Pfozter, pro se Hub Industrial Center Foot of Madison St., Wilmington, De. or P. O. Box 987, Wilmington, Del. Tel. #(302) 571-0595 1989c
VS.	
AMERCOAT CORPORATION and AMERON, INC., etc. <i>See 8-20-74</i>	
	For defendant: Adrian W. Maher Kevin J. Maher 955 Main Street Bridgeport, Conn.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB
5 mailed	Clerk	1973	Edmond Pfozter	\$15.00	
		12/11	12, 14 Deposit		
			GE100869		\$15.00
6 mailed	Marshal	1974			
		1975			
of Action: Breach of	Docket fee	1976	E. & E.J.		
cranty	Witness fees	6/28	Pfozter	\$5.00	
			APPEAL		
on arose at: \$37,500.00	Depositions				

	PROCEEDINGS	Date Order Judgment N
11	Complaint, filed. Demand for Jury Trial.	
11	Summons issued and together with attested copies of same, copies of Complaint, Form 285 (3), letter from E. John Pfozter, dated 12/7/73 (cop with additional instructions for Marshal, Checks #3669 in amount of \$25.00 (Marshal's Fee) and #3667 in amount of \$5.00 made payable to Sec. of State - State of Conn. forwarded to Marshal for service.	
18	Notice to Clerk, filed.	
18	Appearance of E. John Pfozter, pro se and Edmond Pfozter, pro se, entered.	
28	Marshal's Return Showing Service, filed. (Summons & Complaint) (Sec. of State - State of Conn., 12/21/73)	
28	Marshal's Return Showing Service, filed. (Summons & Complaint) (Amercoat Corp., 1050 No. Kings Highway, Cherry Hill, N. J., 12/18/73, Mr. E. A. Denman, Manager Marketing)	
28	Marshal's Return Showing Service, filed. (Summons & Complaint) (Amercoat Corp., 201 No. Berry Street, Brea, Calif., 12/18/73, Arthur Perrone - Control)	
74		
2	Notice to Take Deposition of Mr. Richard Rockwood, employee of Amercoat Corp. (as employed at, or operating out of its district office at 1030 N. Kings Hwy., Cherry Hill, N. J.) at 10:00 a.m., January 14, 1974, at the office of Gary Waters, 255 Kings Hwy., East Haddonfield, N. J., filed by Plaintiffs.	
7	Amended Notice to Take Deposition, filed by Plaintiffs. Deposition of Mr. Richard Rockwood, defendant's managing agent, to be taken at the office of Gary Waters, 255 Kings Highway, East Haddonfield, N.J. on 1/14/74 commencing at 10:00 a.m. and continuing from day to day until completed. (Copies of Deposition Subpoenas included)	
8	Appearance of Adrian W. Maher, Esq., and Kevin J. Maher, Esq., entered for Defendant.	
17	Defendant's Motion for Protective Order-Objection to Deposition Because Notice Not Reasonable, and Notice of Motion, filed. (Deposition of W.L. Blackwell, Mgr. of Amercoat Corp., on 1/21/74 at Boston, Mass.)	
2	Plaintiffs' Notice to Take Deposition of Terry Call, defendant's employee or local managing agent, on Feb. 19, 1974, at 10:00 a.m. at office of Clerk. U.S.D.C., S.D.N.Y., filed.	
25	Defendant's Motion to Dismiss under Rule 12(b) of F.R.C.P., and Notice of Motion, filed.	
25	Defendant's Motion to Stay Further Proceedings, and Notice of Motion, filed. Memorandum of Law in Support of Defendant's Motion to Dismiss, filed.	
25	Plaintiffs' Brief in Opposition to Defendant's Motion for Protective	

11-3

SEC.1-RELEVANT DOCKET ENTRIES

3a

U.S. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgment
7/4		
7/5	Affidavit in Opposition to Defendant's Motion for Protective Order (Re: Richard Rockwood), filed, by plaintiffs,	
7/5	Defendant's Motion for Enlargement of Time, and Notice of Motion, filed. (Requests extension to answer or otherwise plead until 20 days after Court has rendered a decision with respect to deft.'s motion to dismiss.)	
	Defendant's Brief in Support of Motion to Stay Further Proceedings, filed.	2-2-
	Reply Brief, filed by defendant.	
2/11	Plaintiff's Motion for Enlargement of Time (from 2/14/74 to 2/28/74), filed.	
2/11	Defendant's Motion for Enlargement of Time, endorsed: "Motion granted." Newman, J. M-2/11/74. Copies to counsel.	
2/11	Plaintiffs' Motion for Enlargement of Time, endorsed: "Motion granted." Newman, J. M-2/11/74. Copies to counsel.	
3/4	Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss per FRCP 12(b), filed.	
3/4	Affidavit in Opposition to Defendant's "Motion to Dismiss per FRCP 12(b)", filed by plaintiffs.	
4/26	Defendant's Motion to Stay Further Proceedings endorsed: "Motion off, without prejudice." Newman, J. M-4/29/74. Copies to counsel.	
4/26	Defendant's Motion for Protective Order, endorsed: "Motion off, without prejudice" Newman, J. M-4/29/74. Copies to counsel.	
4/26	Ruling On Defendant's Motion to Dismiss, filed and entered. Defendant's Motion to Dismiss is denied without prejudice to its renewal after the parties have had an opportunity to explore the alternative of valid service of process under Conn. Gen. Stat. §§ 33-411(a)(1) or (a)(2). NEWMAN, J. M-4/29/74. Copies to counsel, MJB, TEC, RCZ, JON, AHL and U. Conn. Law Review.	
5/17	Plaintiffs' Motion for Leave to Serve and File Amended Complaint and Notice of Motion, filed.	
7/26	Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Leave to Serve and File Amended Complaint, filed.	
8/12	Plaintiffs' Motion for Leave to Serve and File Amended Complaint, endorsed: "Motion granted without objection; service to be made upon Ameron, Inc., within 15 days." Newman, J. M-8/13/74. Copies to counsel.	
7/20	First Amended Complaint and Demand for Jury, filed.	
7/20	Summons issued and together with attested copies of same, copies of Amended Complaint, Form 285 (1), check in the amount of \$10.00, and copy of ORDER of 8/12/74 re service upon Ameron, by J.O.H., forwarded to Marshal for service.	

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SEC.1-RELEVANT DOCKET ENTRIES

- 2(a) -

4a

DATE	PROCEEDINGS	Date Judg.
1974		
8/26	Marshall's return showing service, filed. Summons and Complaint. Date of service 8/23/74. Karlene Eaton, Special Assistant Secretary.	
10/23	Answer of Amercoat Corporation, filed.	
10/29	Placed on Trial List. Notice to counsel re: Trial list sent this date.	
10/30	Motion and Notice of Motion to Quash Defendants' Answer and to Strike Same from the Records, filed by Plaintiffs. <i>11-1-74 on p. 11-7-74</i>	
10/30	Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Quash Defendant's Answer and to Strike Defendant's Answer from the Records, filed.	
10/30	Affidavit in Support of Plaintiffs' Motion to Quash Defendant's Answer and to Strike Defendant's Answer from the Records, filed.	
11/7	Motion to Dismiss Plaintiffs' Action and Notice of Motion, filed by plaintiffs. <i>cc: 11-7-74 11-7-74</i>	
11/7	Affidavit in Support of Plaintiffs' Motion to Dismiss Plaintiffs' Action, filed.	
11/7	Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Dismiss Plaintiffs' Action, filed.	
11/8	Corrections Re "Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Dismiss Plaintiffs' Action", filed.	
11/13	Stipulation of Dismissal, filed by parties, that action is dismissed, with prejudice to the prosecution of this or any other action based on the transaction or occurrence alleged in Civil Action 4768 in U. S. D. C. for Dist. of Delaware and Civil Action B-947 in U.S. D.C. for Dist. of Conn., but without prejudice to the prosecution of such claim in Civil Action 14326 in Superior Court of State of Conn., with costs to abide the determination of Civil Action 14326 in Superior Court of State of Conn., said costs to be determined in accord with the applicable F.R.C.P. and Federal Statutes. SO ORDERED, NEWMAN, J. M-11/13/74 Copies to parties and JON.	
1975		
1976		
3/11	Plaintiffs' Motion To Set Aside Stipulation Of Dismissal Dated Nov. 11, 1974, filed, together with Notice of Motion. <i>Notice 3-16-76 JON</i>	
3/11	Plaintiffs' Brief In Support Of Motion To Set Aside "Stipulation Of Dismissal" Between The Parties Dated November 11, 1974, filed.	
3/11	Affidavit In Support Of Motion To Set Aside "Stipulation Of Dismissal" Between The Parties Dated November 11, 1974, filed.	
3/23	Memo. in Opposition to Plaintiffs' Motion to Set Aside Stipulation of Dismissal, filed. <i>cc: 3-23-76 Hearing Dpt 2 11-11-76 9:30-10:00, N. H.</i>	
4/20	Supplementary Affidavit in Support of Motion to Set Aside "Stipulation of Dismissal" Between the Parties Dated November 11, 1974, filed. <i>cc: 4/20/76</i>	
4/20	Plaintiffs' Supplementary Brief in Support of Motion to Set Aside "Stipulation of Dismissal" Between the Parties Dated November 11, 1974, filed. <i>cc: 4/20/76</i>	

SEC.1 -RELEVANT DOCKET ENTRIES

C. 110 Rev. Civil Docket Continuation

5a

DATE 1976	PROCEEDINGS	Dist Judge
4/20	Hearing in Open Court - Plaintiffs' Motion to Set Aside Stipulation of Dismissal Dated November 11, 1974 - Decision Reserved. Court 9:47 - 10:45 a.m. M-4/20/76-N. NEWMAN, J. (Russell, R., Rowe, D.C.)	
4/27	Court Reporter's Notes of proceedings held before Newman, J. at New Haven on 4/20/76, filed at New Haven. (Russell, R.)	
5/13	RULING ON PLAINTIFFS' MOTION TO SET ASIDE STIPULATION OF DISMISSAL, filed and entered. There being no basis presented for setting aside the stipulation for dismissal of this action, motion is denied. NEWMAN, J. M-5/13/76. Copies to counsel: TEC, MJB, JON, RCZ, JEL, AHL, FOE, U.Conn.Law Rev.	
5/17	Plaintiffs Motion For Enlargement Of Time within which to file Motion For Reargument be extended 20 days from date of Court's decision, filed and endorsed: "Motion denied." NEWMAN, J. M-5/18/76. Copies to counsel.	
5/24	Plaintiffs' Motion For Reargument Pertinent To Plaintiffs' Motion Of March 9, 1976, To Set Aside Stipulation Of Dismissal Dated November 11, 1974, filed together with Notice of Motion for reargument and Plaintiffs' Memorandum In Support Of "Plaintiffs' Motion For Reargument Pertinent To Plaintiffs' Motion Of March 9, 1976, To Set Aside Stipulation Of Dismissal Dated November 11, 1974."	
5/27	Ltr. dtd. 5/25/76 to Clerk with substituted pages 11 and 12 of Pltf.'s Memorandum Re Motion For Reargument attached, filed.	
6/3	Plaintiffs' Memo. in Opposition to Defts' Letter of May 28, 1976, Addressed to the Court, as Resisting "Plaintiffs' Motion For Reargument Pertinent to Plaintiffs' Motion of March 9, 1976, to Set Aside Stipulation of Dismissal Dated Nov. 11, 1974," filed. MAY 6- V-24.	
6/14	Pltfs.' Motion For Reargument filed 5/24/76, endorsed: "MOTION DENIED." NEWMAN, J. M-6/15/76. Copies to parties.	
6/28	Plaintiffs' Notice of Appeal from Orders of 5/13/76 and 6/14/76, filed. Copies to all parties.	
6/28	Civil Appeals Management Plan and Forms C and D mailed Messrs. Pfotzer.	
6/28	Certified copies of Notice of Appeal and Docket Entries mailed Clerk, U. S. Court of Appeals.	
7/1	Acknowledgment of receipt of copies of Notice of Appeal and Docket Entries received from Clerk, U. S. C. A.	

SEC. 2. PLAINTIFFS' NOTICE OF APPEAL

U.S. DISTRICT COURT
NEW HAVEN, CONN.

6a

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
NEW HAVEN, CONN.

FOR THE

DISTRICT OF CONNECTICUT

EDMOND PFOTZER, BY E. JOHN PFOTZER, :
HIS ATTORNEY-IN-FACT, AND E. JOHN :
PFOTZER, CO-PARTNERS TRADING AS :
E. & E. J. PFOTZER, :

CIVIL ACTION
NO. B-947

Plaintiffs, :

v. :

AMERCOAT CORPORATION, AND :
AMERON, INC. :

Defendants. :

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs herein hereby
appeal to the United States Court of Appeals for the Second Cir-
cuit;

(a) from the order of the United States District Court
(Newman, J.) dated May 12, 1976, denying: "PLAINTIFFS' MOTION TO
SET ASIDE STIPULATION OF DISMISSAL, DATED NOVEMBER 11, 1974" (copy
of ruling attached marked Exhibit "A"; and

(b) plaintiffs appeal from the order of the said District
Court (Newman, J.), dated June 14, 1976, denying "PLAINTIFFS' MO-
TION FOR REARGUMENT PERTINENT TO PLAINTIFFS' MOTION OF MARCH 9,
1976, TO SET ASIDE STIPULATION OF DISMISSAL DATED NOVEMBER 11,
1974" (copy of order attached marked Exhibit "B").

Pursuantly, plaintiffs appeal from each and every part
of the said orders, (a) and (b), supra.

SEC 2-PLAINTIFFS' NOTICE OF APPEAL

Dated: June 25, 1976

E. John Pfozzer
E. John Pfozzer, plaintiff pro se

Edmond Pfozzer
Edmond Pfozzer, plaintiff pro se

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of plaintiffs' "PLAINTIFFS' NOTICE OF APPEAL, has been made upon opposing counsel by depositing a copy thereof in the United States mail, postage prepaid, addressed to:

Maher and Maher
955 Main Street
Bridgeport, Connecticut 06601

Plaintiffs pro se:

E. John Pfozzer
E. John Pfozzer
P.O. Box 987
Wilmington, Delaware 19899
(302-571-0595)

Edmond Pfozzer
Edmond Pfozzer

DEC 13 1974
RULING ON PLAINTIFFS' MOTION TO
SET ASIDE STIPULATION OF DISMISSAL
UNITED STATES DISTRICT COURT

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

DISTRICT OF CONNECTICUT

EDMOND PFOTZER, ET AL :

V. :

CIVIL NO. B-947

AMERCOAT CORPORATION, ET AL :

RULING ON PLAINTIFFS' MOTION TO
SET ASIDE STIPULATION OF DISMISSAL

On September 11, 1974, the parties to this action entered into a stipulation providing for the dismissal of this action with prejudice, but without prejudice to the prosecution of a state lawsuit involving some of the same claims the plaintiffs had sought to litigate in this Court. Plaintiffs claim the defendants have breached the settlement agreement. Since the stipulation imposes no affirmative duties on any of the parties, it is difficult to understand the claim that the agreement has been breached.

At a hearing on this motion, plaintiffs elaborated and somewhat altered their claim to assert that the stipulation for dismissal should be set aside because it was induced by fraud. Plaintiffs contend that prior to the stipulation for dismissal entered in this case, a stipulation was entered in the state court litigation by which the plaintiffs understood all pending issues would be submitted for resolution. Plaintiffs further allege that this understanding was undermined by the decision of the state court plaintiffs (defend-

-4-

SEC.3-RULING ON PLAINTIFFS' MOTION TO
SET ASIDE STIPULATION OF DISMISSAL

allege thwarted their ability to pursue their counterclaim against the state court plaintiffs.

9a

The short answer to all of this is that plaintiffs explicitly elected to remit their controversy for determination in the state court, and cannot now complain because that tactic has not proved to be as advantageous as they anticipated. The stipulation entered in this case imposed no obligation on the defendants to press their claims in the state court. Indeed, it is hard to understand how anyone can seriously contend that they have a judicially enforceable right to be sued by someone else. In any event, if, as plaintiffs allege, the outcome in the state court litigation somehow deprives plaintiffs of an enforceable right they believe they acquired pursuant to a stipulation entered in that litigation, their remedy, if any, is to appeal the unfavorable orders entered in the state court litigation. In fact, such appeals have been taken and are now pending, including an appeal from the state court's refusal to consider the counterclaim which the plaintiffs filed in the state court action, in which they were defendants.

There is no basis presented for setting aside the stipulation for dismissal of this action, and the motion is therefore denied.

Dated at New Haven, Connecticut, this 12 day of May, 1976.

Jon O. Newman

Jon O. Newman

United States District Judge

SEC. 4-FIRST AMENDED COMPLAINT

10a

FILED

IN THE UNITED STATES DISTRICT COURT

JUN 17 10 52 AM '74

FOR THE DISTRICT OF CONNECTICUT

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

EDMOND PFOTZER, ETC., et' ano :

Plaintiffs, :

Civil Action No. B-947

AMERCOAT CORPORATION, etc., :

Defendants. :

PLAINTIFFS' MOTION FOR LEAVE TO
SERVE AND FILE AMENDED COMPLAINT

Plaintiffs move:

(1) For an order for leave to serve and file an Amended Complaint in the form annexed, i.e., to include as a defendant Ameron, Inc., etc.

(2) For such other relief as may be just.

EDMOND PFOTZER, etc. and
E. JOHN PFOTZER, Plaintiffs

Edmond Pfotzer
Edmond Pfotzer

E. John Pfotzer
E. John Pfotzer

P. O. Box 987
Wilmington, Del. 19899

FILED

JUN 26 AM '74

CLERK
DISTRICT COURT
BRIDGEPORT, CONN.

*8/9/74 Motion granted without
objection; serve to be
made on Ameron, Inc. within
15 days. J. C.*

SEC. 4-FIRST AMENDED COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

11a

EDMOND PFOTZER, etc., et ano, :
Plaintiffs :
vs. : Civil Action No. B-947
AMERCOAT CORPORATION and : FIRST AMENDED COMPLAINT
AMERON, INC., etc. :
Defendants : AND DEMAND FOR JURY

Plaintiffs, appearing pro se, complaining of the
defendants, say:

FIRST COUNT FOR BREACH OF WARRANTY

AGAINST DEFENDANT AMERCOAT

1. Plaintiff E. John Pfozter is a citizen and resident
of the State of Delaware, and plaintiff Edmond Pfozter is a cit-
izen of the State of Vermont and a resident of the State of
Delaware.

2. Defendant, Amercoat Corporation (hereafter "Amer-
coat"), on information and belief, is a California corporation
with its principal office in the State of California (Exhibit
No. 1), which at all times material to this complaint has been
doing business in the State of Connecticut, and concurrently de-
fendant has been doing business in the State of Connecticut
through the integrated business activities of its successor,
Ameron, Inc. (hereafter "Ameron"), formerly Amercoat Corporation,
a California Corporation currently qualified to do business in

3. The amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs.

4. By reason of the foregoing, this Court has jurisdiction under the provisions of 28 U.S.C. § 1332 and 28 U.S.C. § 1391 (a), (b), and (c).

5. On or about March 2, 1967, plaintiffs entered into a public construction contract with a municipal corporation, City of Norwalk, Connecticut (hereafter 'Norwalk'), for the construction of Alterations and Additions to its existing Sewage Treatment Plant, Norwalk, Connecticut.

6. Defendant and/or its agents and representatives, during the period July 1968 to July 1969, represented to Norwalk and its agents that its product, Bondstrand pipe material (hereafter 'Bondstrand'), was suitable for installation under the City of Norwalk's, supra, pertinent contract plans and specifications and that Bondstrand was fit for the purpose intended, which purpose Norwalk made known to defendant.

7. Defendant and its agents knew the said Bondstrand pipe was not fit for the purpose intended and its said representations were knowingly false when made, and made for the purpose of inducing reliance thereon and to induce Norwalk and plaintiffs to rely thereon and for plaintiffs to purchase it at the direction of Norwalk.

8. Plaintiffs, relying on defendant's knowledge and expertise as a manufacturer and dealer in Bondstrand pipe, and on the false representations made by defendant

without plaintiff's knowledge of the falsity thereof, and believing said representations to be true, were wrongfully and fraudulently induced thereby to purchase the said Bondstrand from defendant.

9. Plaintiffs installed the Bondstrand pipe according to defendant's instructions.

10. Shortly after installation, the said material failed.

11. By reason of the foregoing, plaintiffs had to replace the defective material, to their damage in the sum of \$12,500.00.

12. By reason of the foregoing, defendant breached its warranties of fitness for the purpose intended.

SECOND COUNT FOR FRAUD
AGAINST DEFENDANT AMERCOAT

13. Repeat the First Count

14. By reason of the foregoing recited facts, defendant practiced wilful and knowing fraud in inducing plaintiffs to purchase the said material, to plaintiffs' damage in the sum of \$12,500.00 and as stemming from defendant's representation in regard to a material fact, supra; Second, that such representation is false; Third, that such representation was not actually believed by the defendant, on reasonable grounds, to be true; Fourth, that it was made with intent that it should be acted on; Fifth, that it was acted on by plaintiffs to their damage; and Sixth, that in so acting on it the plaintiffs were ignorant of its falsity, and reasonably believed it to be true.

SEC.4-FIRST AMENDED COMPLAINT

14a

THIRD COUNT AGAINST
DEFENDANT AMERON

15. Repeat First and Second Counts.

16. On information and belief, Ameron is a successor corporation to defendant Amercoat (Exhibit No. 2).

17. On information and belief, Ameron and Amercoat have merged.

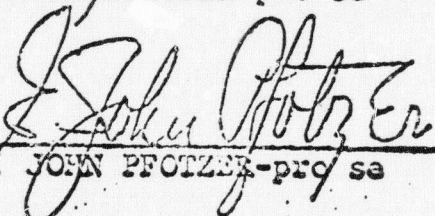
18. By reason of the foregoing, Ameron has assumed Amercoat's liabilities herein.

19. By reason of the foregoing, Ameron is the agent of Amercoat.

20. By reason of the foregoing, Ameron is the alter ego or counterpart of Amercoat.

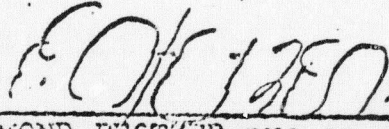
WHEREFORE plaintiffs demand judgment against defendants in the sum of \$12,500.00, with interest and costs, and punitive damages for defendants' fraud in the sum of \$25,000.00.


EDMOND PFOTZER-pro se


E. JOHN PFOTZER-pro se

JURY DEMAND

Plaintiffs demand trial by jury.


EDMOND PFOTZER-pro se

SEC. 4-FIRST AMENDED COMPLAINT ²⁻¹⁻⁷⁷ FILED

ARTICLES OF INCORPORATION

In the Office of the Secretary of State
of the State of California

OF

JAN 4 1977

AMERCOAT CORPORATION

By [Signature] Secretary of State
[Signature]

15a

I

The name of this corporation is AMERCOAT CORPORATION.

II

The purposes for which this corporation is formed are:

No 1

(a) The primary business in which the corporation intends to engage, and which is and shall be among the purposes for which this corporation is formed is the production and sale of corrosion control products;

(b) To acquire goods, wares, merchandise, machinery, equipment, devices, appliances, and personal property of every sort, nature and description or and for its own account and otherwise, by purchase, lease, or otherwise; to own, operate, maintain, manage, equip, improve, repair, alter and otherwise deal with, use, employ, design, develop, assemble, build, construct, fabricate, manufacture and import such personal property; and to mortgage, deed in trust, pledge and otherwise encumber, and to sell, export, use as lessor, exchange or otherwise dispose of such personal property;

(c) To acquire real property by purchase, lease or otherwise, to build, equip, own, hold, lease, operate,

Exhibit of 15a
2-1-77
15

SEC. 4-FIRST AMENDED COMPLAINT

improve, develop, exploit, farm, subdivide, exchange, sell and otherwise dispose of, to contract to buy, exchange, sell and otherwise dispose of, to mortgage or otherwise encumber, and generally in any and every way to invest in, develop, exploit, own and deal in and with real estate, both improved and unimproved, lease and leasehold interests and water, oil, gas and mineral rights, and all rights, interests, estates and equities therein;

(d) To lend money and negotiate loans with or without interest, and with or without security; to draw, accept, endorse, discount, buy, sell and deliver bills of exchange, promissory notes, bonds, debentures, coupons and other negotiable instruments and securities; to purchase, acquire, own, hold, guarantee, sell, assign, transfer, mortgage, pledge or otherwise dispose of and deal in, shares, bonds, notes, debentures or other securities or evidences of indebtedness of any other person, corporation or association, whether domestic or foreign, and whether now or hereafter organized or existing; and, while the holder thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do;

(e) To apply for, lease, purchase or otherwise acquire, and to hold, use, own, operate and introduce, assign, sell or otherwise dispose of, any letters patent, licenses, improvements, processes, trademarks, trade names, copyrights, devices, methods and formulae, used

SEC. 1 - FIRST AMENDED COMPLAINT

United States, or elsewhere, or otherwise; and to use, exercise, develop, grant licenses in respect to, or otherwise turn to account any such patents, licenses, processes, inventions, improvements, devices, methods, formulae, trademarks, copyrights and trade names, or the like, or any such property or rights, and to supervise or otherwise exercise such control over its said licensees and the business conducted by them, as may be agreed upon in its contracts with such licensees for the protection of its rights in said patents, inventions, privileges, processes, formulae, improvements, devices, trademarks, methods, copyrights, and trade names, and to secure to it the payment of agreed royalties; and to manufacture or deal in any article, product or by-product, process or the like, under any such patents, or any articles of any description used or suitable to be used in connection therewith;

(f) To acquire, by purchase or otherwise, the goodwill, business, property rights, franchises and assets of every kind, with or without undertaking to discharge, either wholly or in part, the liabilities of any person, firm, association or corporation; and to acquire any business as a going concern or otherwise, (1) by purchase of the assets thereof, wholly or in part, (2) by acquisition of the shares or any part thereof, or (3) in any other manner; and to pay for the same in cash or in the shares, or bonds, or notes, or other evidences of indebtedness of this corporation, or otherwise; to hold, maintain and operate, or

goodwill, business, rights and property so acquired, and to conduct in any lawful manner the whole or any part of any business so acquired; and to exercise all the powers necessary or convenient in and about the management of such business;

(g) To enter into, make, perform and carry out contracts of every sort and kind, which may be necessary or convenient for the business of this corporation, with any person, firm or corporation, whether private, public or municipal, body politic, any state, territory or municipality of the United States of America, or any foreign country or agency, or political subdivision thereof;

(h) To engage in any undertaking or business, as a general or limited partner, joint adventurer or otherwise, with any person, firm or corporation, and to conduct its business, or any part thereof, or any business in which it is engaged as a partner or joint adventurer, under such fictitious name or names as may be determined from time to time;

(i) To promote or aid in any manner, financially or otherwise, any person, partnership, joint adventure, association or corporation and, for this purpose, to guarantee the contracts, dividends, shares, bonds, debentures, notes and other obligations of such other persons, partnerships, joint adventures, associations or corporations;

SEC. 4 - FIRST AMENDED COMPLAINT

(j) To borrow money, to issue bonds, notes, debentures or other obligations of this corporation from time to time, for any of the objects or purposes of this corporation, and to secure the same by mortgage, pledge, deed of trust or otherwise, or to issue the same unsecured; to purchase or otherwise acquire its own bonds, debentures or other evidences of its indebtedness or obligations; to purchase, hold, sell and transfer shares of its own capital stock to the extent and in the manner provided by the laws of the State of California as the same are now in force or may hereafter be in force;

(k) To carry on any business whatsoever which this corporation may deem proper or convenient, in connection with any of the foregoing purposes or otherwise, or which may be calculated, directly or indirectly, to promote the interests of this corporation or to enhance the value of its property or business, within the scope of the powers and purposes of this corporation; to conduct its business in this state, in other states, in the District of Columbia, in the territories and possessions of the United States of America and foreign countries; and to hold, purchase, mortgage and convey real and personal property, either in or out of the State of California, and to have and to exercise all the powers conferred by the laws of California upon a corporation formed under the laws pursuant to and under which this corporation is formed, as such laws are now in effect or may at any time hereafter be amended;

(l) To do any act and transact any business in

connection with the said purposes and powers which a co-partner or natural person could do or exercise, and which now or hereafter may be authorized by law; to carry on any other lawful business enterprise or activity whatsoever which may seem capable of being carried on in connection with the foregoing, or calculated, directly or indirectly, to promote the interests of this corporation or to enhance the value of its properties;

(m) The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms of any other clause or paragraph of these Articles. The objects, purposes and powers specified in each of the clauses and paragraphs of these Articles shall be regarded as independent objects, purposes and powers.

III

The county in the State of California where the principal office for the transaction of the business of this corporation is to be located is the County of Los Angeles.

IV

This corporation is authorized to issue only one (1) class of shares of stock of the total number of Twenty-Five Thousand (25,000), having an aggregate par value of Twenty-Five Thousand Dollars (\$25,000), each of which has a par value of One Dollar (\$1.00).

SEC. 4-FIRST AMENDED COMPLAINT

V

The number of directors of this corporation shall be three (3).

The names and addresses of the persons to act as the first directors of this corporation are:

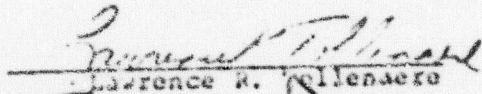
Lawrence R. Tollenaere
400 South Atlantic Boulevard
Monterey Park, California 91754

John M. Reed
400 South Atlantic Boulevard
Monterey Park, California 91754

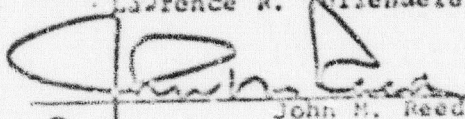
Richard H. Jenner
400 South Atlantic Boulevard
Monterey Park, California 91754

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of California, we, the undersigned, constituting the incorporators of this corporation, including the persons named hereinabove as the first directors of this corporation have executed these Articles of Incorporation on the date set opposite of our names.

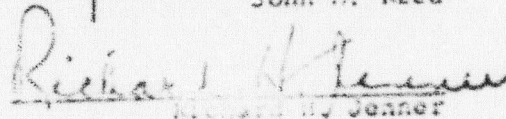
DATED: 12/17, 1970.


Lawrence R. Tollenaere

DATED: 17 Dec., 1970.


John M. Reed

DATED: 12/17, 1970.


Richard H. Jenner

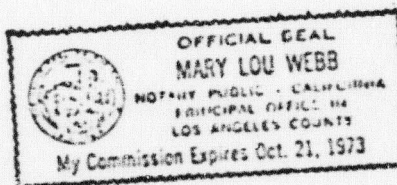
SEC. 4-FIRST AMENDED COMPLAINT

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On this 7th day of December 1970, before me,
the undersigned, a Notary Public in and for said County
and State, personally appeared LAWRENCE R. TOLLENAERE,
JOHN M. REED and RICHARD H. JENNER, known to me to be
the persons whose names are subscribed to the foregoing
Articles of Incorporation, and acknowledged to me that
they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

Mary Lou Webb
Notary Public in and for Said
County and State



SEC.4-FIRST AMENDED COMPLAINT

~~FILED~~
A102788

FILED
In the Office of the Secretary of State
of the State of California

23a

MERGER OF SUBSIDIARY CORPORATION

JAN 4 1971

CERTIFICATE OF OWNERSHIP

EDMUND C. KROHN, Jr., Secretary of State

By [Signature] Deputy

Sup
We, the undersigned John M. Reed and R. H. Jenner hereby do certify that we are, and at all times herein mentioned have been respectively the vice president and secretary of Ameron, Inc., a California corporation; and hereby do further certify and state:

(a) That said corporation owns all the outstanding stock of Amercoat Corporation, a California corporation.

(b) That at a meeting of the board of directors of said corporation the following resolution were adopted by a majority of its board of directors to merge Amercoat Corporation, a California corporation and to assume all its obligations:

WHEREAS, this corporation owns all the outstanding stock of Amercoat Corporation, a California corporation; and

WHEREAS, it is deemed advisable and in the best interest of this corporation and its shareholders that this corporation merge Amercoat Corporation and assume all its obligations;

NOW THEREFORE, BE IT RESOLVED, that this corporation merge Amercoat Corporation into itself and assume all its obligations pursuant to California Corporations Code Section 4124;

RESOLVED FURTHER, that the president or vice president and secretary or assistant secretary be and they hereby are authorized and directed to execute and file a certificate of ownership as required by California Corporations Code Section 4124 and take such further action as may be necessary or proper to accomplish such merger.

(c) That the meeting of the board of directors at which said resolution was adopted was duly held on the 20th day of November, 1970, at the hour of 3 O'clock P.M. at 400 South Atlantic Boulevard, in the City of Monterey Park, State of California, and that said resolution was adopted by the vote of ten directors, the authorized and elected number of directors

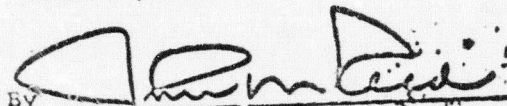
EXHIBIT NO 2

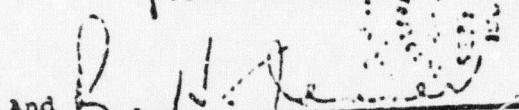
No 2

SEC. 4-FIRST AMENDED COMPLAINT

on the board being ten, all of whom were present and voting
at said meeting.

AMERON, INC.

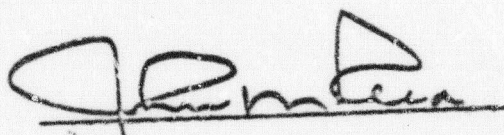
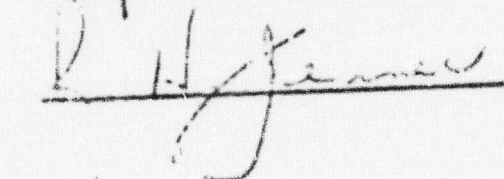
By 
Vice President

And 
Secretary

John M. Roed and R. H. Jenner, the Vice President and
Secretary, respectively, of Ameron, Inc., a California
corporation each says:

I declare under penalty of perjury that the foregoing
is true and correct.

Executed on the 17th day of December, 1970, at Monterey
Park, California.

SEC.4-FIRST AMENDED COMPLAINT

25a

APPLICATION FOR CERTIFICATE OF AUTHORITY

ORIGINAL-CORPORATION

REV. 4-66

STATE OF CONNECTICUT

SECRETARY OF THE STATE

FOR OFFICE USE

ACCOUNT NO

A 58585

INITIALS

AD th

Must be accompanied by:

1. A Certificate of Good Standing authenticated by appropriate officer of the state of incorporation.

Of The Secretary of the State of Connecticut

Date

1976

The corporation named below hereby applies for a Certificate of Authority to do business or conduct affairs in the State of Connecticut.

NAME OF CORPORATION AMERON, INC.	STATE OF INCORPORATION California	DATE OF INCORPORATION September 13, 1961
ADDRESS OF PRINCIPAL OFFICE IN STATE OF INCORPORATION 100 South Atlantic Blvd, Monterey Park, California 91754	ADDRESS OF EXECUTIVE OFFICES 100 South Atlantic Blvd, Monterey Park, California 91754	
ADDRESS OF PROPOSED PRINCIPAL OFFICE IN CONNECTICUT NONE		

DIRECTORS AND OFFICERS

Name	Title	Residence Address
------	-------	-------------------

EXHIBIT NO. 2 (SEE ATTACHED RIDER)

THE CHARACTER OF THE BUSINESS WHICH THE CORPORATION INTENDS TO TRANSACT, OR THE AFFAIRS IT INTENDS TO CONDUCT, IN THE STATE OF CONNECTICUT IS

Manufacture and/or sales, service, storage of construction industry products

DESIGNATION OF SHARES			NUMBER OF SHARES		
Class	Series	Par	Issued and Outstanding	Treasury	Authorized
Common		\$5.00	2,189,479		6,000,000
Preferred		No Par			500,000

(If a nonprofit corporation) No part of the corporation's income is distributable to its members, directors, or officers.

We hereby declare, under the penalties of perjury, that the statements made in the foregoing application are true:

NAME OF PRESIDENT, CHAIRMAN, OR MANAGING OFFICER (Print or type) L. R. Tollenare	NAME OF SECRETARY (Print or type) R. H. Jenner
SIGNATURE OF PRESIDENT, CHAIRMAN, OR MANAGING OFFICER <i>[Signature]</i>	SIGNATURE OF SECRETARY <i>[Signature]</i>

Is a nonprofit corporation, so state under "Designation of Shares"

FILED State of Connecticut

DEC 24 1976 - 11:23 AM

Shirley T. Grier

FILING FEE	CLERK FEE	CERTIFICATION FEE	TOTAL FEE
\$ 100.	\$ 100.	\$ 100.	\$ 300.

SIGNED BY SECRETARY OF THE STATE

RECEIVED BY CORPORATION

RECEIVED BY CORP. AUTH.

OFFICE OF THE SECRETARY OF THE STATE

SEC. 4-FIRST AMENDED COMPLAINT

APPOINTMENT OF ATTORNEY FOR SERVICE OF PROCESS

(Foreign Corporation)

The name of the corporation is AMERON, INC.It is incorporated under the laws of California

The corporation appoints CT CORPORATION SYSTEM its attorney upon whom all process, in any action or proceeding against it, may be served. The corporation agrees that any process against it which is served on said attorney shall be of the same legal force and validity as if served on the corporation and that such appointment shall continue in force as long as any liability remains outstanding against the corporation in Connecticut.

Address of Attorney for service of process:

The appointee is a corporation organized under the laws of Delaware whose principal office in the State of Connecticut is: 799 Main Street, Hartford, Connecticut 06103.

Dated at Monterey Park, California this 11 day of December, 19 70

AMERON, INC.

By

R. H. Jenner
XXXXXXXXXXXXXXXXXXXX Secretary

R. H. Jenner

Accepted: CT CORPORATION SYSTEM

By

D.R. QuarnstromAttorney for Service of ProcessAsst. Secy.

(Title)

FILED State of Connecticut

DEC 24 1970 11 29 AM

AMERON.
OFFICERS AND DIRECTORS

27a

DIRECTORS (Outside)

Victor K. Atkins
President
Doran Company
2815 Vallejo Street
San Francisco, California 94123

R. Stanton Avery
Chairman, Avery Products Corp.
430 Laguna Road
Pasadena, California 91105

Gordon L. Hough
Director, Public & Employee Information
American T & T Company
200 East 64th Street
New York, New York 10021

Kenneth Lieber
Senior Vice President
Cyprus Mines Corporation
148 Via Waziers, Lido Isle
Newport Beach, California 92660

H. Safford Nye
Management Consultant
1025 Avondale Road
San Marino, California 91108

William A. Simpson, Jr.
President, The William Simpson
Construction Company
15840 Royal Oak Road
Encino, California 91316

OFFICERS

*Lawrence R. Tollenaere
President
1400 Milan Avenue
South Pasadena, California 91030

*Elliott E. Brainard
Senior Vice President
900 Sierra Madre Boulevard
San Marino, California 91108

Paul K. Beemer
Vice President
98 Emerald Bay
Laguna Beach, California 92651

D. A. Hausmann
Vice President
959 Eilinita
Glendale, California 91208

C. David Merlihy
Vice President
2169 Citron Road
La Habra Heights, California 90631

Earl E. Jackson
Vice President
1123 Brentfield Drive
McLean, Virginia 22101

Robert L. Muller
Vice President
3603 Diamond Head Circle
Honolulu, Hawaii 96815

*John M. Reed
Vice President
1207 Dolphin Terrace
Corona del Mar, California 92625

*G. E. Seidel
Vice President
1212 Oaklawn Drive
Arcadia, California 91106

John C. Silliman
Vice President
1839 North Virazon Drive
La Habra, California 90631

Roger F. Barrett
Controller
7821 Bacon Road
Whittier, California 90602

W. H. Jenner
Secretary-Treasurer
525 North Alhambra Avenue
Monterey Park, California 91754

*Also a Director

Directors' terms expire last Monday in March.

NEW HAVEN

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

(29) 28a

EDMOND PFOTZER, etc., et ano.)

Plaintiffs,)

v.)

Civil Action No. B-947)

AMERCOAT CORPORATION, and)
AMERON, INC.,)

Defendant.)

STIPULATION OF DISMISSAL

WHEREAS, there are presently pending three civil actions between the parties, based upon the same transaction or occurrence, namely Civil Action 14326 in the Superior Court of the State of Connecticut, Civil Action 4768 in the United States District Court for the District of Delaware, and Civil Action B-947 in the United States District Court for the District of Connecticut, and

WHEREAS, the parties are in dispute as to the terms of a stipulation entered into in one of these actions, Civil Action 14326 in the Superior Court of the State of Connecticut on September 9, 1974, and


WHEREAS, the parties desire to dismiss the actions presently pending in the United States District Court for the District of Delaware and the United States District Court for the District of Connecticut with prejudice to the prosecution of these or any other actions arising out of the aforesaid transaction or occurrence, notwithstanding the eventual determination, whatever that may be, of the terms of said stipulation, but without prejudice to the prosecution of such claim as is presented in Civil Action 4768 and in Civil Action B-947, supra, in Civil Action 14326 in the Superior Court of


SEC.5-STIPULATION OF DISMISSAL,
WITH ORDER ENDORSED THEREON

29a

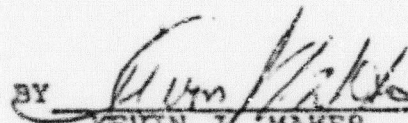
NOW THEREFORE it is hereby stipulated and agreed by and between the undersigned that this action hereby is dismissed, with prejudice to the prosecution of this or any other action based on the transaction or occurrence alleged in Civil Action 4768 in the United States District Court for the District of Delaware and Civil Action B-947 in the United States District Court for the District of Connecticut, but without prejudice to the prosecution of such claim in Civil Action 14326 in the Superior Court of the State of Connecticut, with costs to abide the determination of Civil Action 14326 in the Superior Court of the State of Connecticut, said costs to be determined in accord with the applicable Federal Rules of Civil Procedure and Federal Statutes.

DATED: November // , 1974

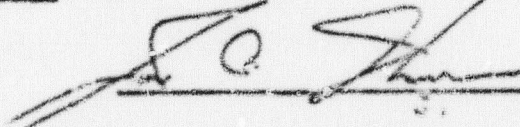

E. JOHN PFOTZER
Plaintiff pro se


EDMOND PFOTZER,
Plaintiff pro se

MAHER & MAHER

BY 
KEVIN J. MAHER
P. O. Box 269
Bridgeport, Conn. 06601

SO ORDERED this // day of November, 1974.



SEC. 6-PLAINTIFFS' MOTION TO SET
 ASIDE STIPULATION OF DISMISSAL
DATED NOVEMBER 11, 1974

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

EDMOND PFOTZER, ETC., ET ANO,	:	CIVIL ACTION NO. B-947
Plaintiffs,	:	MARCH 9, 1976
vs.	:	
AMERCOAT CORPORATION and	:	
AMERON, INC., ETC.	:	PLAINTIFFS' MOTION TO SET
Defendants.	:	ASIDE STIPULATION OF DISMISSAL
	:	<u>DATED NOVEMBER 11, 1974</u>

Plaintiffs move:

(1) For an order of the Court to set aside the "STIPULATION OF DISMISSAL" dated November 11, 1974, as entered into between the parties herein, on the ground that said "STIPULATION OF DISMISSAL" has been breached by the defendants, and

(2) That the Court restore the case to the active docket, and

(3) For such other relief as may be just.

For the plaintiffs,

by:

E. John Protzer
 E. John Protzer, pro se

Edmond Pfotzer
 Edmond Pfotzer, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

EDMOND PFOTZER, ETC., ET ANO, : CIVIL ACTION NO. B-947
Plaintiffs, : March 9, 1976
vs. :
AMERCOAT CORPORATION and :
AMERON, INC., ETC. :
Defendants. : AFFIDAVIT IN SUPPORT OF MOTION
TO SET ASIDE "STIPULATION OF
DISMISSAL" BETWEEN THE PARTIES
DATED NOVEMBER 11, 1974
STATE OF DELAWARE } ss.
COUNTY OF NEW CASTLE }

E. John Pfozter being duly sworn deposes and says that he is one of the plaintiffs appearing pro se in the above captioned action, that he is fully familiar with all of the facts related herein, and that he makes this affidavit in support of plaintiffs' application for an order to set aside "STIPULATION OF DISMISSAL" BETWEEN THE PARTIES DATED NOVEMBER 11, 1974.

1. This application is made in consideration of the fact that the parties herein ^{did} and on September 9, 1974 enter into a stipulation in the Superior Court (Stamford) County of Fairfield, Connecticut, Civil Action No. 14326, Exhibit A, annexed, which inter alia provided for the dismissal with prejudice of the subject action in this Court.

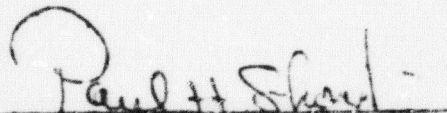
2. On or about September 9, 1975 the defendants breached the said settlement agreement of September 9, 1974, in the Superior Court of Connecticut, and did subsequently reaffirm said breach at various dates subsequent thereto, the last of such affirmations being made on March 3, 1976, and March 4, 1976, and by virtue of

said breach the plaintiffs are now moving to set aside the "STIPULATION OF DISMISSAL" dated November 11, 1974, as made in this Court, Exhibit B, annexed and incorporated herein.

3. Pertinently, your deponent asserts that the plaintiffs herein did on their part promptly, and faithfully fulfill and carry out all their required acts, duties, obligations and promises as are set out, in the Exhibit "A" affixed and incorporated herein, and that the record in Civil Action 14326, Superior Court of Connecticut, shows that the defendants on their part have failed to perform their collateral promises, although they have otherwise wrongfully appropriated benefits of the "STIPULATION OF DISMISSAL" as was duly executed by defendants' attorney on November 11, 1974 in this Court.

Wherefore, your deponent respectfully submits that this Court ought to issue its order to set aside the "STIPULATION OF DISMISSAL" between the parties dated November 11, 1974, and restore the subject action to the active trial list.

Subscribed and sworn to before
me this 9th day of March 1976



Notary Public



E. John Pfozger

CERTIFICATION

This is to certify that on the 9th day of March, 1976, a copy of this Affidavit, Notice of Motion, Motion, Brief in Support of Motion were mailed via certified mail to: Maher & Maher, Esqs., 855 Main Street, Bridgeport, Connecticut, 06604.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
 4-20-76 *** TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF CONNECTICUT

EDMOND PFOTZER, ETC, ET ANO,	:	CIVIL ACTION NO. B-947
Plaintiffs,	:	April 13, 1976
vs.	:	
AMERCOAT CORPORATION and	:	
AMERON, INC., ETC.	:	
Defendants.	:	SUPPLEMENTARY AFFIDAVIT IN
	:	SUPPORT OF MOTION TO SET ASIDE
	:	"STIPULATION OF DISMISSAL"
STATE OF DELAWARE	}	BETWEEN THE PARTIES DATED
COUNTY OF NEW CASTLE	ss.	<u>NOVEMBER 11, 1974</u>

E. John Pfoetzer being duly sworn deposes and says that he is one of the plaintiffs appearing pro se in the above captioned action, and that he is fully familiar with all of the facts related herein, and that he makes this supplementary affidavit in support of plaintiffs' application for an order to set aside: "STIPULATION OF DISMISSAL BETWEEN THE PARTIES DATED NOVEMBER 11, 1974.", Exhibit A, annexed and incorporated.

1. This application is made in consideration of the fact that the parties herein did on September 9, 1974 enter into a stipulation in the Superior Court (Stamford) County of Fairfield, Connecticut, Civil Action No. 14,326, Exhibit B¹ annexed, which inter alia provided for the dismissal of the subject action in this Court.

¹Said Exhibit B supersedes and replaces Exhibit A as was erroneously attached to plaintiffs' affidavit dated March 9, 1976.

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

34a

2. On or about September 9, 1975 the defendants breached the said settlement agreement of September 9, 1974, Exhibit B, in the Superior Court of Connecticut, supra, and did confirm said breach at various dates subsequent thereto, the last of such confirmations being made on March 3, 1976, and March 4, 1976, and by virtue of said breach the plaintiffs have necessarily moved to set aside the "STIPULATION OF DISMISSAL" dated November 11, 1974 as made in this Court, Exhibit A, annexed, and incorporated herein.

3. Pertinently, your deponent asserts that the plaintiffs herein did on their part promptly, and faithfully discharge all their required acts, duties, obligations and promises as are set out, in Exhibit B annexed and incorporated herein, and that the record in Civil Action 14,326, Superior Court of Connecticut, shows that the defendants herein on their part failed to perform their collateral promises, although they correlatively wrongfully appropriated the full benefits of said "STIPULATION OF DISMISSAL" as duly executed by defendants' on November 11, 1974.

4. Your deponent pertinently asserts that Hon. Harold H. Dean, Judge, Superior Court for the State of Connecticut, Fairfield County, State of Connecticut, did on March 16, 1976, and as subsequent to defendants' breach (see 2. supra), rule that the Hon. P. B. O'Sullivan, State Referee, in whose Court the stipulation, Exhibit B, annexed, had been entered, did not have authority to overrule the prior decision of Hon. A. Tunick, Judge of the same Superior Court, as was made on July 20, 1973. Thereafter he ruled that these plaintiffs' Amended Answer and Counterclaim were not a part of the pleadings in the Superior Court Action No. 14326 (N.B. These plaintiffs were defendants in that action).

5. Said Superior Court, Hon. Harold H. Dean, Judge, did also render on March 16, 1976, other collateral rulings in Civ. Action 14,326 and the totality of which culminated with his ultimate ruling: "And therefore there is nothing for this Court to try."

6. Pertinent to the Court's ruling next above, the plaintiffs' herein sought by "Notice of Motion", and "Motion" -- Exhibit C to be permitted to reargue the Court's rulings etc. on March 16, 1976. Plaintiffs' motion was supported by a comprehensive brief and supporting exhibits which are presently not considered material to the subject motion, but which will be supplied to this Court on its request. Plaintiffs said motion for "Reargument" was summarily denied by the Court.

7. On April 13, 1976 plaintiffs' herein filed their revised "Appeal and Assignment of Errors", to the Supreme Court of Connecticut, State of Connecticut. Your deponent is of the opinion that this Court may desire to refer to this Exhibit D to confirm the present status of the case in the Connecticut Superior Court.

8. Your deponent asserts that all parties to the stipulation of September 9, 1974, Exhibit B, other than the defendants herein, confirmed that stipulation in its entirety. For partial confirmation of this statement your affiant attaches copy of third party defendant's "MEMORANDUM IN SUPPORT OF MOTION TO STRIKE FROM THE JURY DOCKET" dated October 8, 1975, Exhibit E. Upon the first sheet thereof, the City of Norwalk sets out its agreement and understanding of the terms of the stipulation and likewise the agreement and understanding of the other parties to the September 9, 1975 stipulation, Exhibit B, annexed, and which reads:

"MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE FROM THE JURY DOCKET

The City of Norwalk respectfully draws the Court's attention to the Stipulation contained in the attached transcript of proceedings before Judge P. B. O'Sullivan, Referee, in this matter on September 9, 1974 (Plaintiffs' Exhibit B, annexed). On Page X-1 the Court stated this Stipulation substantially as follows:

"...the parties who are in litigation before me...agree that the various pieces of litigation in the system that is in controversy between you gentlemen are to be given to me to handle and solve, and that the two federal cases...are to be withdrawn because they cover the same matters that I will be called upon to decide."

This statement was agreed to by the City of Norwalk (Page X-1), by Amercoat (Page X-2), and by Mr. Pfozter (pp. X-2 and X-3). The Stipulation included an agreement that all positions and issues that any of the parties wished to raise would be admitted. See Mr. Lessin's remarks at Page X-5 and Page X-10. (and as continued on page 2) Pursuant to this agreement the Pfozter brothers withdrew their Federal Court actions."

9. Your deponent, as predicated on defendants' unilateral breach of the aforesaid stipulation, Exhibit B, annexed, and collateral fraud in the inducement for plaintiffs' agreement to "Stipulation for Dismissal" dated November 11, 1974, Exhibit A, (see POINT VIII of plaintiffs' brief), and as correlatively representing a failure of consideration for the Stipulations dated September 9, 1974 and November 11, 1974 respectively, as were bargained for by these plaintiffs, asserts that these plaintiffs should not now be deprived of their legal and equitable right to pursue their original subject action in this court.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
4-20-76 *** TO SET ASIDE STIPULATION OF DISMISSAL

Wherefore, your deponent respectfully submits that this Court ought now to issue its order to set aside the "STIPULATION OF DISMISSAL" between the parties dated November 11, 1974, and restore the subject action to the active docket list to the end that the involved litigation may now move forward.

Subscribed and sworn to before
me this 13th day of April, 1976.

Mary Ann Wagon
Notary Public

E. John Protzer
E. John Protzer

CERTIFICATION

This is to certify that a copy of the Supplementary Affidav
and Supplementary Brief in Support of Motion were mailed to
Mayer & Mayer, Esqs. - 855 Main Street, Bridgeport, Conn. 06603

E. John Protzer
E. John Protzer

NOV 4 1974

4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL NEW HAVEN, CONN.
UNITED STATES DISTRICT COURT
NEW HAVEN

FOR THE DISTRICT OF CONNECTICUT

(39)

8a

EDMOND PFOTZER, etc., et ano.)

Plaintiffs,)

v.)

Civil Action No. B-947

AMERCOAT CORPORATION, and)

AMERON, INC.,)

Defendant.)

STIPULATION OF DISMISSAL

WHEREAS, there are presently pending three civil actions between the parties, based upon the same transaction or occurrence, namely Civil Action 14326 in the Superior Court of the State of Connecticut, Civil Action 4768 in the United States District Court for the District of Delaware, and Civil Action B-947 in the United States District Court for the District of Connecticut, and

WHEREAS, the parties are in dispute as to the terms of a stipulation entered into in one of these actions, Civil Action 14326 in the Superior Court of the State of Connecticut on September 9, 1974, and


WHEREAS, the parties desire to dismiss the actions presently pending in the United States District Court for the District of Delaware and the United States District Court for the District of Connecticut with prejudice to the prosecution of these or any other actions arising out of the aforesaid transaction or occurrence, notwithstanding the eventual determination, whatever that may be, of the terms of said stipulation, but without prejudice to the prosecution of such claim as is presented in Civil Action 4768 and in Civil Action B-947, supra, in Civil Action 14326 in the Superior Court of the State of Connecticut,

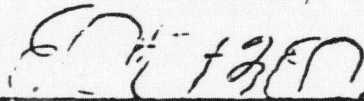
SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

39a

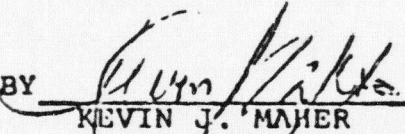
NOW THEREFORE it is hereby stipulated and agreed by and between the undersigned that this action hereby is dismissed, with prejudice to the prosecution of this or any other action based on the transaction or occurrence alleged in Civil Action 4768 in the United States District Court for the District of Delaware and Civil Action B-947 in the United States District Court for the District of Connecticut, but without prejudice to the prosecution of such claim in Civil Action 14326 in the Superior Court of the State of Connecticut, with costs to abide the determination of Civil Action 14326 in the Superior Court of the State of Connecticut, said costs to be determined in accord with the applicable Federal Rules of Civil Procedure and Federal Statutes.

DATED: November // , 1974

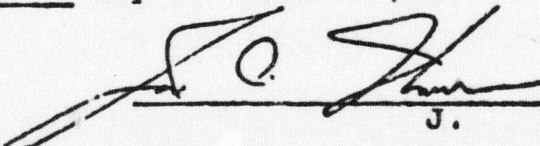

E. JOHN PFOTZER
Plaintiff pro se


EDMOND PFOTZER,
Plaintiff pro se

MAHER & MAHER

BY 
KEVIN J. MAHER
P. O. Box 269
Bridgeport, Conn. 06601

SO ORDERED this 11 day of November, 1974.


J.

SEC 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

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CASE NO. 7261

AMERCOAT CORPORATION

vs

TRANSAMERICA INS. CO, et als

SUPERIOR COURT

FAIRFIELD COUNTY

BRIDGEPORT, CONNECTICUT

SEPTEMBER 9, 1974

E X C E R P T

BEFORE:

THE HONORABLE PATRICK B. O'SULLIVAN, REFEREE

APPEARANCES:

FOR THE PLAINTIFF:

Slavitt & Connery
by Harry Lessin, Esq.

FOR THE DEFENDANTS:

Frederick Dahlmeyer
(for Transamerica Ins. Co.)
E. John Pfozter, Pro Se
Arthur Goldblat, Esq.
(Corp. Co., City of Norwalk)

REPORTED BY:

David J. Geci
Court Reporter
Bridgeport Superior Court

(After a short recess the following took place:)

THE COURT: Did you come to any agreement?

MR. LESSIN: Your Honor, in speaking with counsel....

THE COURT: You don't need to take this.

(Whereupon discussion was held off the record)

THE COURT: After discussion among the various ones in this room I take it our agreement is as follows-- that includes myself: I will not go ahead and hear this matter unless the parties who are in litigation before me either in or beyond the ruling I made but they include the named parties in the original writ and those who have appeared by virtue of the third party complaint that was filed, unless all of you agree that the various pieces of litigation in the system that is in controversy between you gentlemen are to be given to me to handle and solve, and that the two federal cases--one in the Delaware District if it is in Delaware, the Wilmington District, and the other federal case in the Connecticut case--are to be withdrawn because they cover the same matters that I will be called upon to decide. Does that state the position?

MR. GOLDBLAT: I think it goes beyond that. We have agreed. You said that unless we do agree you will withdraw. I think we have agreed and the jurisdiction will be confirmed upon you.

THE COURT: I want to have your agreement and state it on the record. So once you say you will agree to my

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** (TO SET ASIDE STIPULATION OF DISMISSAL)

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position and let me handle all of your problems, I will go ahead and hear this case. If not, I am through.

MR. GOLDBLAT: For the City of Norwalk we agree.

MR. LESSIN: We agree to that, too, Your Honor.

And now....

THE COURT: Wait a minute. I want to get another agreement. Are there any conditions? I don't want any conditions on this.

MR. LESSIN: No. I want you to get into the record, if you will, the aspect with respect to the bond as set forth in oyer.

THE COURT: Oh, yes. Yes. We will come to that in a moment. Do you agree to that Mr. Pfotzer?

MR. PFOTZER: We agree to your position as set out, but we make this exception to that last statement that we do not agree that the judgment then would bear against us. He is speaking for the bonding company. We have to indemnify the bonding company. We have to defend for the bonding company. Therefore, we are not accepting the judgment ourselves. This is what I believe Mr. Lessin is trying to get, that when he gets his concurrence he automatically has ours. I am saying we are not willing to say the judgment he is saying now in my opinion that there is a judgment against those parties.

THE COURT: No. No. He is merely saying that a bond may be admitted in evidence.

MR. PFOTZER: Is that the only statement you are

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

MR. LESSIN: That is correct.

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THE COURT: With respect to that specific thing.

MR. LESSIN: With respect to that specific part.
That the bond as set out in oyer that is in the court
file be admitted as and for the original bond.

MR. PFOTZER: If that is all he is saying, I am in
complete agreement with your position.

THE COURT: And furthermore, you are not hurt by
them because the burden is on him. In other words, if
the bond goes out you are the sole one that might be
responsible.

MR. PFOTZER: We are the sole one in any event.
We have to indemnify the bonding company with our
agreement with the bonding company. We have to pay for
the attorney's services.

THE COURT: If you go into bankruptcy there might
be some other....

MR. PFOTZER: Yes, but when it goes against the
bonding company, in reality it goes against us.

THE COURT: So do we understand each other?

MR. LESSIN: So that bond has been admitted in
evidence?

MR. GOLDBLAT: May we have the agreement of Mr.
Dahlmeyer?

MR. DAHLMAYER: I am in accord. However, if you
find agreement for the plaintiff, exclusion may be
extended on that until this case is completed.

THE COURT: I won't decide anything unless I decide the whole works.

MR. DAHLMeyer: Fine. Do you think I have to show up the next time then?

THE COURT: I don't know what your defenses are.

MR. DAHLMeyer: As far as I am concerned I am done, I would think.

MR. PFOTZER: We would be agreeable to that.

THE COURT: All right. But you don't.... He is representing a third party--somebody other than you. He has entered an appearance for this bonding company. You have some duties to that company. Don't make yourself liable.

MR. PFOTZER: I believe he was saying he accepts all of that which transpired already.

MR. GOLDBLAT: He didn't want to show up the next time around, either.

MR. DAHLMeyer: I will leave that open, Your Honor.

MR. LESSIN: May I have a clarification on that, Your Honor? Will Your Honor then take it, admit as an exhibit the bond already filed in the oyer?

THE COURT: I understand there is no objection at this point?

MR. DAHLMeyer: Correct, Your Honor.

THE COURT: That will be Exhibit "C".

MR. DAHLMeyer: It is in the original file. It was filed January 5, 1970.

MR. LESSIN: Pleading Number Thirteen, Your Honor.

THE COURT: You find it, will you? (Pause) All right. This is the one. This is marked Exhibit "C".

(Whereupon the Court marked a bond as "Exhibit C.")

THE COURT: Have you got your exhibits now proper?

MR. GOLDBLAT: We have Exhibit "A" as the letter of October 17. The bond is Exhibit "C". I don't have Exhibit "B".

THE COURT: Exhibit "B" is a letter of notification to the plaintiff of the bonding company. It is the letter notifying the bonding company. All right. Now, I have one other suggestion. Let's get a bite to eat.

(Whereupon Court recessed for lunch.)

MR. LESSIN: I think we are all here, Your Honor.

THE COURT: All right.

MR. LESSIN: Your Honor, I don't know what, but I just didn't get the reason why we were called back at one o'clock unless it was to conclude.

THE COURT: To take care of these four gentlemen.

MR. LESSIN: Oh, Your Honor. I would object to any testimony at this point on the third party complaint for the simple reason that those will raise issues in the light of the cross complaint or special defense that Mr. Pfozter will be entitled to file, and in order to treat that matter it is necessary for us to have our witnesses and our men present at the time so that they hear what the City may have to offer in that connection.

I would ask then that nothing be taken at this time in connection with the third party complaint, Your Honor.

THE COURT: I am quitting. I have done my job. No, I won't hear any more. Get some other referee to handle it. I won't handle it any more. I thought we all agreed that I was to accommodate these four and hear the testimony. Now I find at the very start you object. Now that is all right. It is all right. But I am going to disappear.

MR. LESSIN: You see, Your Honor,....

THE COURT: No. I won't hear it any more. No. I am through.

MR. PFOTZER: Can we reconsider that please, Your Honor?

THE COURT: No.

MR. PFOTZER: We want to keep you here.

THE COURT: I want to help out but I don't want to be hindered in helping out.

MR. LESSIN: Your Honor, they are raising technical matters that makes it necessary for us to have our men and engineers present at the hearing to hear what the City may have to say in connection with the third party. That is the reason--so we may be in the position to refute anything they may say.

THE COURT: I can understand that.

MR. LESSIN: We are not seeking to have you disqualified.

MR. PFOTZER: No, sir.

MR. GOLDBLAT: I certainly would be glad for the City to recognize Amercoat's right to present his witnesses on the basis of the transcript or afterwards on the second day of trial so long as the witnesses who are here can be heard without any prejudice to Amercoat's case. We'd ask for like only a couple hours since the Court is available and the witnesses are here. Let them be heard and rebutted at the leisure of counsel.

THE COURT: I take it what Mr. Lessin wants to object to is his people who he will have to call should have an opportunity to hear these people state their testimony.

MR. GOLDBLAT: But a transcript wouldn't be sufficient, do you think?

MR. LESSIN: No, Your Honor, it could not be because we will have points to demonstrate in opposition to what we believe may be testified to on the part of the City.

THE COURT: What is this? One of the gentlemen here?

MR. GOLDBLAT: Mr. Baccus.

THE COURT: What will his testimony consist of?

MR. GOLDBLAT: His testimony will be to the effect representations were made concerning the ability of the pipe to withstand the condition, that Amercoat knew of the conditions in which the pipe was to be laid, and that the pipe ruptured. Mr. Miller is the inspector for

the City who will testify to further representations as to that and to the nature of the failure of the pipe. Mr. Albertson, one of the engineers, will testify to the failure and the damages incurred.

THE COURT: What about this gentlemen? Is his testimony of such a nature that you couldn't cross examine him? Is the offer of proof of this gentleman here of such a nature that you couldn't cross examine?

MR. LESSIN: Not without the presence of the people who allegedly made the deal with the City pursuant to which the pipe was ordered by Mr. Pfozter. These people have got to be present, Your Honor, and one of them is in the West Indies who was present at the time when this was alleged to have taken place.

THE COURT: Do you gentlemen all come from Norwalk?

MR. GOLDBLAT: Yes.

THE COURT: Not too far out of the way. None come from Pittsburgh or Chicago. And you come from where sir?

MR. JELLESAN: Buffalo.

MR. LESSIN: And this is the third time he has been here.

THE COURT: Would he be on rebuttal of anything?

MR. JELLESAN: I'd be here with my men.

MR. LESSIN: Beg pardon?

MR. JELLESAN: I'd bring my men.

MR. LESSIN: And he might be on rebuttal. It all depends on what is introduced, Your Honor. And he would

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

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be on rebuttal together with the men regarding certain aspects that we believe that the City will introduce in connection with that.

THE COURT: What is your notion of the length of time it would take?

MR. LESSIN: For the presentation?

THE COURT: Of your side of this third party thing.

MR. LESSIN: It all depends on the length of time that is....

THE COURT: Would you say about three hours?

MR. GOLDBLAT: We estimate not more than three hours.

THE COURT: Is that complete?

MR. GOLDBLAT: That is right. For the City's case.

THE COURT: Including cross?

MR. GOLDBLAT: I would say not much more than that.

THE COURT: Something can be done at the outset in two days if necessary?

MR. LESSIN: You mean a trial of this case and all the aspects of it, Your Honor?

THE COURT: Yes.

MR. LESSIN: If they take three hours, we will conclude that within two days, Your Honor.

MR. GOLDBLAT: "I think that would be more than adequate.

THE COURT: How about you?

MR. PFOTZER: Aside from what they anticipate, Your

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

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Honor, and with the knowledge I think of what is involved, it would take me a day for complete cross examination of all the witnesses.

THE COURT: Let me tell you something about cross examination. I have yet to see in forty-five years of work in this place any case but one that was ever won on cross examination. I am always interested in quality, not quantity.

MR. PFOTZER: I will bear that in mind, Your Honor.

THE COURT: I very seldom discover a case where extensive cross examination has done anything other than make me yawn.

MR. PFOTZER: Right.

THE COURT: In other words, if it takes that long to bring out anything, it can't be worth a great deal. I always felt if you needed five hundred witnesses to prove a case, you must have a pretty lousy case.

MR. PFOTZER: I won't have witnesses, Your Honor. It will just be cross examination.

THE COURT: That is what I am driving at. Quality, not quantity.

MR. LESSIN: So you see, Your Honor, when we know this, when he gets his special defense in to which we have agreed pursuant to the stipulation and the withdrawal of the actions and then everything is set in the pleadings, we will come down here prepared to get rid of this case in two days.

SEC. 8 - PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

THE COURT: Can we do this? Can we get your pleadings in such shape?

MR. LESSIN: Sure, Your Honor. Sure.

THE COURT: And get them in immediately?

MR. LESSIN: No, Your Honor. I am going to do this. I will ask the....

THE COURT: First I want him to file...

MR. LESSIN: He will file.

THE COURT: ...reason. State whatever it is.

MR. PFOTZER: Correct the amended complaint.

MR. LESSIN: Let me say this, Your Honor, that all there is likely to be filed on the basis of what I understand the pleadings in the federal court action here is merely the defense in the nature of statute of limitations based on the period of time he has delayed his defense in the federal court action. And it is in the nature of breach of warranty. And there is a time limit. And if his time limit has expired in the federal court action we will use that same time limit, and that was brought to my attention by Attorney Mahar who represents through the insurance company.

THE COURT: You can handle it by denial or pleadings.

MR. LESSIN: That is correct. Special reply or special defense to that.

THE COURT: How long would it take you to get those pleadings in shape?

MR. PFOTZER: Just as soon as I can put the amended

complaint in. Tomorrow, Your Honor.

MR. LESSIN: All right.

THE COURT: Do you know in a general way what this complaint will be?

MR. LESSIN: Yes. The matter is seeking, I believe, seeking damages for breach of warranty which, well, he had put in a special defense in this action which was denied by the court.

THE COURT: You see, I am going to overrule the court.

MR. LESSIN: That is correct. It was overruled.

THE COURT: I am going to allow him to do something of course that he couldn't do.

MR. LESSIN: These special defenses. And we will then reply to that.

THE COURT: So that two weeks at the outside?

MR. LESSIN: That is correct. And with these special defenses, Your Honor.

THE COURT: Now, I am going on a short trip; I am going to start the last of September. I don't want to start this thing until everything is ready and then we are going right straight through and finish it even if it takes five weeks. We will go day after day after day after day until we finish this case. Is that understood?

MR. PFOTZER: Yes, air.

THE COURT: No more excuses unless somebody drops dead or something of that nature.

MR. LESSIN: Let me say this, too.....

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-74 -
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

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THE COURT: How much time would you say...three days at the outside to finish this?

MR. LESSIN: Yes. Let me ask this: At the time you filed your special amended answer, will that be the answer?

MR. PFOTZER: That will be the answer.

MR. LESSIN: Simultaneous with that it will be necessary for me to consent to that and I will give you the consent provided that upon the giving of the consent to the filing that the actions in the federal courts are simultaneously withdrawn. Am I correct?

MR. PFOTZER: That is correct.

MR. LESSIN: What will be before you now will be that amended complaint, and you will attach a stipulation to that or attach something to that that upon the giving of the consent to file that amended answer that had been previously denied by the court.

THE COURT: Now, Mr. Pfozter, before you agree to that, are you sure that everything that is in the federal case will be in before me?

MR. PFOTZER: It almost parallels it word for word.

THE COURT: All right. You're not giving up anything.

MR. PFOTZER: No, sir.

MR. LESSIN: So with the filing of that you will then attach a paper that upon my consent to the filing of that special which was previously denied by the court earlier this year, that the actions in the federal courts

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT L-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

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in New Haven and in the Wilmington District in Delaware
will be withdrawn by you. Am I correct?

MR. PFOTZER: Yes, with the understanding that you
are going to give your consent when you receive it.

MR. LESSIN: Oh, yes.

MR. PFOTZER: Okay.

MR. LESSIN: Now, also it is understood that you
will also send down a stipulation for the jury claim.
Is that correct?

MR. PFOTZER: Correct.

MR. LESSIN: You will withdraw that. All right.

THE COURT: Well, I think we made some progress.
Now it is the question of setting a date.

(Following further discussion concerning a mutually
agreeable date, it was decided that the case would
resume on November 18, 1974, at the Superior Court in
New Haven, Room 601, commencing at 9:00 o'clock a.m.)

MR. PFOTZER: I don't want to throw any obstacles
in the way, but are these other witnesses in the West
Indies going to be here?

MR. LESSIN: Whatever witnesses are required and on
the job and will be available will be here. And I believe
that gentleman from the West Indies, will he be back?

MR. JELLESON: Yes.

MR. LESSIN: The indication is yes.

THE COURT: And if he isn't, there will be no
continuances. Just hard luck for him.

* * * *

SEC. 8 - PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL

55a

AMERCOAT CORPORATION,
Plaintiff,

v.

TRANSAMERICA INSURANCE CO.,
AND EDMOND PFOTZER AND
E. JOHN PFOTZER,
Defendants.

EDMOND PFOTZER AND
E. JOHN PFOTZER,

Third Party Plaintiffs,

v.

THE CITY OF NORWALK,

Third Party Defendant.

: SUPERIOR COURT OF CONNECTICUT
(STAMFORD), COUNTY OF FAIRFIELD

: CIVIL ACTION - DOCKET NO. 14326
CASE NO. 7261

: DEFENDANTS' AND THIRD PARTY
PLAINTIFFS' NOTICE OF MOTION
FOR REARGUMENT ET CETERA PERTINENT TO
THE COURT'S ORAL DECISIONS
OF MARCH 16, 1976.

: March 23, 1976

NOTICE OF MOTION

TO: Harry M. Lessin, Esq.

Kevin J. Maher

Fred D. Dahlmeyer, Esq.

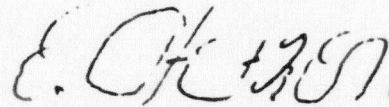
Robert G. Zanesky, Esq.
Corporation Counsel,
City of Norwalk

PLEASE TAKE NOTICE that on April 2, 1976, or at the earliest convenience of the Court thereafter, the undersigned will move this Court for its order or orders for reargument pertinent to the Court's oral decisions of March 16, 1976, and/or to have its oral judgment opened for correction of judicial error within the term.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL



E. John Pfozter, Defendant pro se
and Third Party Plaintiff pro se



Edmond Pfozter, Defendant pro se
and Third Party Plaintiff pro se

Service in accord with Section 80 of the Connecticut Practice
Book is hereby certified.

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

57a

AMERCOAT CORPORATION,	:	SUPERIOR COURT OF CONNECTICUT
Plaintiff,	:	(STAMFORD), COUNTY OF FAIRFIELD
v.	:	
TRANSAMERICA INSURANCE CO.,	:	CIVIL ACTION - DOCKET NO. 14326,
AND EDMOND PFOTZER AND	:	CASE NO. 7261
E. JOHN PFOTZER,	:	
Defendants.	:	DEFENDANTS' AND THIRD PARTY
	:	PLAINTIFFS' MOTION FOR REARGO-
	:	UMENT ETC. PERTINENT TO THE
	:	COURT'S ORAL DECISIONS ETC.
	:	OF MARCH 16, 1976
<hr/>		
EDMOND PFOTZER AND	:	
E. JOHN PFOTZER,	:	
Third Party Plaintiffs,	:	
v.	:	
THE CITY OF NORWALK,	:	
Third Party Defendant.	:	March 23, 1976

Defendants and Third Party Plaintiffs move the Court for an order or orders as consonant with movants' right to reargument pertinent to the Court's oral decisions of March 16, 1976, and/or to have its oral judgment opened for correction of judicial errors, within the term as predicated on the following grounds:

- (1) Because of erroneous conclusions of law as involved therein;
and
- (2) Because the Court's finding was based on mistakes of fact;
and

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

- (3) Because of the Court having prematurely made its decisions etc. without theretofore having heard the movants' several motions of record as are inextricably and materially related thereto; and
- (4) Because of the Court not having timely permitted the movants' presentation of their pertinent arguments in accord with the applicable pleadings of record, and as involving the pertinent "LAW OF THE CASE"; and
- (5) In addition, That the Court's order or orders collaterally restore the case to the active docket; and
- (6) In addition, That the Court provide such other legal and equitable relief as may be just.

Respectfully submitted,

E. John Pfozzer

E. John Pfozzer Defendant pro se
and Third Party Plaintiff pro se

E. C. Pfozzer

Edmond Pfozzer, Defendant pro se
and Third Party Plaintiff pro se

Service in accord with Section 80 of the Connecticut Practice Book is hereby certified.

ORDER OR ORDERS

It is hereby ordered that this motion be granted in the following particulars:

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

E. & E. J. PFOTZER

Contractors

Post Office Box 987

WILMINGTON, DELAWARE 19899

April 13, 1976

59a

Processing plant equipment
and piping installations.

John J. P. Ryan, Clerk
Superior Court
State of Connecticut
Fairfield County
15 Hoyt Street, Extended
Stamford, Connecticut

Re: Civil Action No. 14,326
Amercoat v. Transamerica et als

Att: Arthur Jennings, Assistant Clerk

Dear Sir:

This is to respectfully advise that we are forwarding herewith the following papers and related items as responsive to your telephone call of this date wherein you invited our attention to several deficiencies in our "Appeal" and "Assignment of Errors" as forwarded you under date of April 9, 1976. Accordingly: we are transmitting our revised papers consisting of the following

- (1) Five sets of:
"Defendants' Appeal" (dated April 13, 1976)
- (2) Five sets of:
"Assignment of Errors" (dated April 13, 1976)
- (3) Check in the amount of \$45.00 to cover filing fee and check in the amount of \$50.00 to cover record fee; (\$50.00 check previously mailed).
- (4) *Certified check in the amount of \$150.00 to insure that the appeal will be carried to decision (to replace the prior uncertified check previously forwarded; please return the first check to us).
- (5) These revised papers are to supersede those forwarded you under date of April 9, 1976.

*(Bank Cashier's Check)

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
4-20-76-TQ SET ASIDE STIPULATION OF DISMISSAL

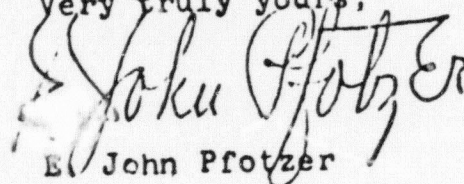
John J. P. Ryan, Clerk

Page 2

April 13, 1976

If additional copies of papers, or added fees are required herein please advise us relative thereto by collect telephone so that we may promptly rectify any further inadvertent deficiency.

Very truly yours,


E. John Pfofzer

cc: - all counsel

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
TO SET ASIDE STIPULATION OF DISMISSAL (11-11-74)

AMERCOAT CORPORATION,

: April 13, 1976

61a

Plaintiff,

: SUPERIOR COURT (STAMFORD)
COUNTY OF FAIRFIELD, CONN.

vs.

: CIVIL ACTION DOCKET NO. 14,326

TRANSAMERICA INSURANCE COMPANY :
AND EDMOND PFOTZER AND E. JOHN :
PFOTZER, CO-PARTNERS DOING BUS- :
INESS UNDER THE CO-PARTNERSHIP :
NAME AND STYLE OF E. & E. J. :
PFOTZER,

Defendants,

AND E. & E. J. PFOTZER,

Third Party Plaintiffs,

vs.

THE CITY OF NORWALK,

Third Party Defendant.

DEFENDANTS' AND THIRD PARTY PLAINTIFFS' APPEAL

In the above entitled action, the defendants and third party plaintiffs appeal to the Supreme Court of Connecticut from the several rulings, decisions, orders etc. as dated July 20, 1973, December 3, 1975, March 2, 1976 to March 16, 1976 inclusive, and April 1 1976 - (see letter dated April 3, 1976 addressed to Clerk of Court - Exhibit 1¹ annexed).

THE DEFENDANTS AND
THIRD PARTY PLAINTIFFS (APPELLANTS)

E. John Pfofzer
E. John Pfofzer, pro se

Edmond Pfofzer
Edmond Pfofzer, pro se

¹N.B. Inasmuch as the Court's docket and record do not contain the record of the various rulings, decisions, judgments, orders etc. as duly requested of the Court on April 3, 1976 (Exhibit A, annexed and incorporated). Appellants necessarily reserve their right to supplement their subject appeal, and "Assignment of Errors" when all such requested data has been duly

62a

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

I certify that the appellants in the above entitled appeal have deposited with me the amount of \$150.00 (certified check) as security that they will prosecute this appeal to effect and pay any costs for which judgment may be rendered against them therein, and that the foregoing appeal was filed on April , 1976, and that the defendants have paid the entry fee in the amount of \$45.00 and record fee in the amount of \$50.00.

Clerk of the Superior Court
for Fairfield County

Service in accordance with Section 80 of the Connecticut Practice Book is hereby certified.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
~~4-20-76 TO SET ASIDE STIPULATION OF DISMISSAL~~

E. & J. J. PFOTZER

Contractors

Post Office Box 987

WILMINGTON, DELAWARE 19899

April 5, 1976

Processing plant equipment
and piping installations.

John J. P. Ryan, Esq.
Office of the Clerk
Superior Court of Connecticut
15 Hoyt Street, Extended
Stamford, Connecticut

Re: Civil Action No. 14326, Amercoat v. Transamerica et als-
Request for Notices of Decisions, Rulings, Orders etc.

Dear Sir:

This is to advise that we are attaching corrected copy of our letter as addressed to you under date of April 3, 1976; and request that you note correction (1976 changed to 1975) as made in the fourth line from the bottom of the first page.

Very truly yours,

E. John Pfotzer
E. John Pfotzer

cc: All counsel

EXHIBIT NO-A

E. & E. J. PROTZER
Contractors

Post Office Box 987
WILMINGTON, DELAWARE 19899

April 3, 1976

164a

Processing plant equipment
and piping installations.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

John J. P. Ryan, Esq.
Office of the Clerk
Superior Court of Connecticut
15 Hoyt Street, Extended
Stamford, Connecticut

Re: Civil Action No. 14326, Amercoat v. Transamerica et als-
Request for Notices of Decisions, Rulings, Orders etc.

Dear Sir:

This is to respectfully advise we refer herein to
Practice Book Sec. 317 which reads as follows:

Sec. 317. Notice to Referees and Attorneys (Amended June 26,
1972, to take effect Oct. 1, 1972. ||)

The clerk shall give notice to each referee of a reference to him and
to the attorneys of record of all judgments, nonsuits, default decisions,
orders and rulings made concerning pending cases and shall date on the
docket the date of the issuance of such notice. In case of appellate proceed-
ings thereon, the time limited by law for commencing such proceedings
shall date from the time when such notice is issued by such clerk. (P.B.
1951, Sec. 198; see Gen. Stat., § 51-53 and annotations, 1963.) (Amended
June 1, 1964, to take effect Sept. 1, 1964; amended June 26, 1972, to take
effect Oct. 1, 1972. || ||)

Pertinently, we advise that to this date we have
not received:

(a) formal notices of any rulings, decisions, or orders
as made by the Court since the --- scheduled commencement
of the trial on March 2, 1976 before Hon. Harold H. Dean,
Judge. Inasmuch as we desire to timely appeal several
rulings and/or decisions which have been made in the case
we request (b) you please advise us of any rulings, de-
cisions or orders as were made in connection with the hear-
ing of December 3, 1975 (c) and please advise us of the
dates of all rulings, decisions, or orders as were made by
the Court in the interval between March 2, 1976 and April
1, 1976, and (d) please supply us a copy of the Court's
related docket sheets covering the period November 1, 1976 (1975)*
to the present. Our check (marked not over \$10.00) is
attached to cover the usual copy sheet charge as applied
to the involved copy work.

*Corrected, see letter
April 5, 1976

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

J. P. Ryan, Esq.

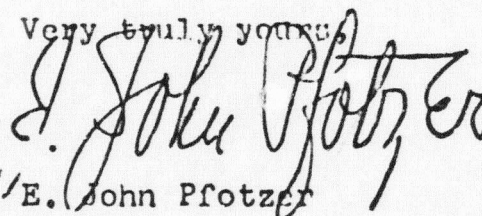
In addition, as a matter of record, we respectfully bring to your attention the content of the last page (page 8) of the transcript of the motion hearing of April 1, 1976 (copy attached).

Pertinently, it is to be noted that Mr. Pfoetzer inquired if the Court was not accepting defendant's brief? To which the Court in response indicated, that it was not (see transcript, supra). However, in response to Attorney Zanesky's subsequent question, the Court gave an apparent contrary answer (see transcript, supra). Immediately, after the subject hearing, the Deputy Clerk, Arthur Jennings, Esq., inquired of the Court, in the presence of Mr. Pfoetzer, as to whether the said brief and attached exhibits had a filed status, the Court responded to the Clerk's question by stating in essence and effect - "Yes, let them come in as filed."

Further, you are requested to advise if the defendants' and third party plaintiffs' said brief and exhibits have in fact a filed status upon the pertinent record. And if so, it is requested that the Court's docket, supra, should so indicate.

Thank you for your anticipated prompt attention to the fore-referenced matters. The latter to the end that defendant's anticipated appeals may be in compliance with the several related provisions.

Very truly yours,


E. John Pfoetzer

cc: All counsel

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT-
4-20-76-TC SET ASIDE STIPULATION OF DISMISSAL

56a

NO. 014326 : SUPERIOR COURT
AMERCOAT CORPORATION : FAIRFIELD COUNTY
VS. : AT STAMFORD
TRANSAMERICA INSURANCE COMPANY :
AND E. AND E. J. PFOTZER, CITY : April 1, 1976
OF NORWALK :

BEFORE THE HON. HAROLD DEAN

Motion: Re: Reargue

A P P E A R A N C E S:

FOR THE PLAINTIFF: Slavitt & Connery
by: Harry M. Lessin, Esq.

FOR THE DEFENDANT: City of Norwalk
by: Robert Zanesky, Esq.

E. John Pfozter, Pro Se.

Reported by:

Robert C. McCarthy

SEC.-8 PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT-
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

67a

THE COURT: You have a motion to reargue.
Is that the first motion?

MR. PFOTZER: Correct, your Honor.

THE COURT: First, I am going to determine
whether or not I am going to let you reargue.
You have a motion to reargue?

MR. PFOTZER: That's correct. Your Honor,
I'll be very brief.

MR. LESSIN: Wait awhile. There's been
no determination as to whether you will be permitted
to reargue.

THE COURT: That's right.

MR. LESSIN: I would say this, your Honor.
That I will oppose any reargument on this motion
because aside from the conclusiveness --

THE COURT: Frankly, I can't possibly think
of anything that would change my mind. I looked
into this case very thoroughly, and at the time
I made my decision I had no question in my mind
whatsoever. Is there any new issue or anything,
Mr. Pfozter? What is your reason for wanting
the motion to reargue? I hope not just to say
the same thing again?

MR. PFOTZER: No, sir. Prior to your having
made your findings and decisions, as I believe
them to be, I did not have an opportunity to cover

the points that you enumerated and said I based my findings or conclusions on these two papers. Thereafter, I endeavored to present to the court certain arguments that I thought that possibly you should have been cognizant of before you had made that overall decision.

THE COURT: What were they?

MR. PFOTZER: They are contained chiefly in the transcript, but they came after you had made your decision.

THE COURT: What are the two points?

MR. PFOTZER: Not two points. There are a number of them, your Honor. And I tried to, at that particular time, in my own way point out to the court that despite its apparent familiarity with the case, there were various aspects thereof that I did not believe that the court had the familiarity with the facts, for example. Therefore, I endeavored to bring them to the court's attention because I thought they should have been there.

THE COURT: What do you mean the facts?

As I recall, I stated that Judge Tunick's order stands, which was denying your motion to amend. Is that correct? Didn't Judge Tunick make an order on June 18 something?

MR. LESSIN: July 19, 1974, I believe.

THE COURT: And I am not going to reverse myself on that one, Mr. Pfozter. And with Judge Tunick's order standing, there is nothing left.

MR. PFOTZER: Furthermore, you were then saying that you nullified in fact the findings of -- or the decision and hearing that was held before --

THE COURT: Judge O'Sullivan.

MR. PFOTZER: -- Judge O'Sullivan. You were nullifying that completely, despite the fact that you were aware that there had been proceedings vacated or dismissed in two Federal courts.

THE COURT: That's correct.

MR. PFOTZER: Upon the strength of that --

THE COURT: Well, they were done after -- there was never any stipulation entered into, discussed.

MR. LESSIN: I would like to say that none was ever finalized. That's all.

THE COURT: That's a question of fact. That's the way I've ruled. And of course you can take an appeal.

MR. PFOTZER: Your Honor, I did want to point out -- I did point out to the court at that particular time that Amercoat's attorneys --

THE COURT: I'm aware of that. That's right.
Two different attorneys, and one attorney in one
state signed one thing.

MR. PFOTZER: All of Amercoat's attorneys
were -- had full knowledge of the stipulation that
was in that court.

MR. LESSIN: Not full knowledge. You brought
it to there attention. You acted on your own,
and you waited a long period of time after you were
notified by me.

THE COURT: Mr. Pfozter, I am not going to grant
your motion to reargue that part of the case. So
I am going to deny your motion to reargue. And now
I have a motion -- what is it? on cost?

MR. PFOTZER: Before you finish that, it
will only take a moment, your Honor. I have prepared
a brief which I think sets out points of law which
the court possibly overlooked, and I request the
court's opportunity to file that brief with the
court for its reconsideration at this particular
time.

THE COURT: I am not going to reconsider it.
I am going to deny the motion to reargue. And
you can have an exception.

MR. PFOTZER: May I have an exception.

THE COURT: You may have an exception.

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT-
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

71a

MR. PFOTZER: Beyond that, your Honor --

THE COURT: Now, there is a question of cost here, isn't there?

MR. ZENESKY: I don't know. I didn't get any motion for cost.

THE COURT: Then that's all I have?

MR. LESSIN: That's all.

MR. PFOTZER: Excuse me. What you're speaking of right now is a minor matter applying to costs of two appeals that were taken to a different court. Those, your Honor, I don't believe we ought to take up this morning. I think what Mr. Lessin is trying to do is quickly get those out of the window.

MR. LESSIN: Just a moment. Let me say this about --

THE COURT: Wait a minute, Mr. Lessin. I am not going to do any more than what's before me. The only thing before me is the motion to reargue. I have ruled on that. That's it.

MR. PFOTZER: Your Honor, I am not trying to enforce my views upon the court. But I do believe that the peculiar legal aspects of this case have possibly not been given their due by you.

THE COURT: I have memorized Judge O'Sullivan's transcript.

MR. PFOTZER: I go beyond that.

THE COURT: I am not going to change my ruling.

MR. PFOTZER: I go beyond that. I also, in my brief, bring up the fact of your interpretation of the agreement that supposedly was made in 13326, in which you're reading of that you said that precluded our having to be paid for anything else in this case involving the Bondstrand pipe. I have endeavored in this brief, in an attempt to suggest to the court, that it did not make all the considerations relative to that pipe which is, it said, I accept, and therefore say there is nothing more in this case for you. I believe I have set that forth in these papers with considerable accuracy and detail, and it ought to be before the court. And in addition, the court says, the way I read your pleading, you have no right to an indemnity. I believe that was a mistake of fact. I have attempted to cover that in my brief, your Honor, for the court's consideration to possibly avoid my having to go to the Supreme Court with an appeal. And on that basis I request that the court accept the brief before it finalizes any decision or order in the case.

THE COURT: Well, I am denying the motion to reargue.

MR. PFOTPZER: Does your Honor automatically then say you do not accept the brief?

THE COURT: Yes.

MR. ZENESKY: If your Honor please, do I understand that your Honor is not accepting the brief and the exhibits then that have been filed by Mr. Pfozter this morning?

THE COURT: I have denied -- he's made a motion to reargue, and I have denied the motion to reargue.

MR. ZENESKY: All right.

* * *

SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT-
4-20-76-TO SET ASIDE STIPULATION OF DISMISSAL

74a

AMERCOAT CORPORATION,

Plaintiff,

vs.

TRANSAMERICA INSURANCE COMPANY
AND EDMOND PFOTZER AND E. JOHN
PFOTZER, CO-PARTNERS DOING BUS-
INESS UNDER THE CO-PARTNERSHIP
NAME AND STYLE OF E. & E. J.
PFOTZER,

Defendants,

AND E. & E. J. PFOTZER

Third Party Plaintiffs,

vs.

THE CITY OF NORWALK

Third Party Defendant.

: SUPERIOR COURT (STAMFORD)
: COUNTY OF FAIRFIELD, CONN.
:
: CIVIL ACTION DOCKET NO. 14,326
:
: APRIL 13, 1976

: DEFENDANTS' AND THIRD PARTY
: ~~PLAINTIFFS' (APPELLANTS)~~
: REVISED ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERRORS

A

Errors Apparent on the Face of the Record;

The court erred:

1. In denying defendants' motion of June 18, 1973 for leave,
to file an Amended Answer and a Counterclaim against plaintiff as:

- a. Plaintiff had waived any objections thereto, under Practice Rule, Sec. 132, by failing to file written specific objections within 10 days;¹
- b. Defendants, pursuant to Sec. 132, of the Connecticut Practice Book, timely filed their Amended Answer and Counterclaim, as a matter of right, which Answer and Counterclaim was automatically, duly filed on plaintiff's failure to file objections within 10 days;
- c. The Court lost jurisdiction of the subject matter of the motion, under Sec. 132, supra, when plaintiff failed to file written specific objections within the 10 days period set out in Sec. 132; Sec. 132 automatically determines the propriety of the filing of the said Amended Answer and Counter-claim.
- d. By virtue of "c", supra, the Court's interlocutory decision denying defendants' subject motion is null and void for lack of subject matter jurisdiction, alternatively;
- e. The subject decision is an abuse of discretion.

2. In denying (to appellants) enforcement of the oral stipulation as was made on the record in open Court on the trial of this case, September 9, 1974, before Hon. P. B. O'Sullivan, State Referee, duly appointed by Court order to conduct the trial; the said oral stipulation being between all the parties and adopted by the Court (P. B. O'Sullivan, State Referee), to the effect that the appellants' Amended Answer and Counterclaim (set out under 1 supra) would be made a part of the subject pleadings by and between the parties to be tried by the Court.

¹ Pertinently, plaintiff Amercoat perpetrated a fraud on the Superior Court, and on these appellants when at the short calendar hearing of July 19, 1973 it knowingly misrepresented its date of receipt of the involved motion. Subsequently, on March 18, 1974, it repeated its misrepresentation before the Supreme Court of Connecticut.

- a. The Court ruled that the Referee, despite the oral agreement stipulation of the parties on the record, did not have the authority to overrule a prior related decision of this Court,
- b. The Court ruled that the appellants were not justified in relying upon the subject oral stipulation entered on the record in open Court on the trial, and as in accord therewith appellants changed their position by entering into a stipulation with plaintiff herein dismissing (with prejudice) appellants two suits in two different United States District Courts (Connecticut and Delaware) which two actions embodied the claims made herein in the subject Counter-claim;
- c. The Court ruled that appellants' Amended Answer and Counterclaim were not a part of the pleadings herein, despite the fact appellants' two actions had been withdrawn with prejudice from the said two United States District Courts;
- d. The Court further ruled that inasmuch as the plaintiff had agreed, despite appellants' objections, to withdraw its Complaint against the appellants, and as was secretly conditioned upon the Third Party Defendants' (City of Norwalk's) collusive agreement with the plaintiff to correlatively withdraw its Cross-complaint (Counter-claim) against the plaintiff (Amercoat); and inasmuch as the Court had ruled appellants' Amended Answer and Counterclaim were not a part of the pleadings (c supra), and inasmuch as the Court had

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

ruled, under e, infra, that the appellants had no justiciable claim over against the Third-Party-Defendant (City of Norwalk), there was no issue remaining - the Court having said in this scheduled jury trial - "that therefore there is nothing for this Court to try the other matters having been withdrawn."

- e. The Court further ruled that appellants' Third Party Complaint against the Third Party Defendant did not include a claim for costs, (see 3 infra), plus indemnification of all legal costs (see f. infra);
- f. The Court further ruled, despite the fact that appellants had been compelled to litigate at exceedingly great expense (in excess of \$60,000.00, as over a six and one half year period and as detailed on the record) in defense of the fraudulent claims made by both plaintiff and third party defendant, and as following two prior trials in the action, and as embracing the preparation of more than four hundred listed responsive papers or short calendar hearings etc. in four separate Courts - the Court was assessing no costs, statutory or otherwise, against any of the parties.
- g. The subject decisions, supra, all represent erroneous conclusions of law in that the Court has overlooked controlling authority and additively has made material mistakes in its factual references and its

3. In its interpretation of a certain settlement agreement dated June 2, 1972, which involved in part, the appellants' and the Third-Party-Defendant's (City of Norwalk) agreement involving a release by the appellants covering payment of certain materials, service, labor, supervision, equipment, and other pertinent costs and charges, as related to the construction of the Alteration and Additions to the Norwalk Sewage and Treatment Plant, identified as Contract 1.0., but as specifically excepting therefrom such items as enumerated, supra, as are involved in the subject action:

- a. The Court ruled that the meaning of said settlement agreement, supra, was clear, and that the appellants had no justiciable claim for costs (incurred by appellants) covering the installation of the subject plaintiff's Bondstrand pipe (which had previously failed despite the plaintiff's expressed warranty to the Third-Party-Defendant), nor did appellants have any justiciable claim for all subsequent costs as were incurred in replacing the Bondstrand pipe supplied by plaintiff (which had failed) with different pipe, and for specific delay - damages, as were specifically involved, and all as pleaded herein.
- b. The Court further erred in failing to give due consideration to the parties pertinent practical interpretation of said agreement, supra, and as is specifically set out in the third-party-defendant's pertinent affidavit dated October 3, 1972.

MR. PROTHER: That stipulation was a forerunner of
SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL

79a

c. The Court, in its interpretation and its ruling,
a.) supra, overlooked the prior applicable rulings
of the authorities, and thereby its subject decision
introduced erroneous conclusions of pertinent law into
the case, and correlatively its ruling was based on
mistakes of fact.

4. In failing to impanel a jury as required in the subject
action and to thereafter give it for findings as to facts in issue,
all matters as would involve questions of fact.

a. The Court, in so failing, did thereby deprive the
appellants of their constitutional right to a jury
trial, and their rights were thereby infringed upon
to their great damage, and which resulted in a construc-
tive dismissal of their actions.

5. The Court, by its involved rulings, etc., permitted the
Third-Party-Defendant to withdraw, on March 3, 1976, its Counter-
claim against the appellants over appellants' exception, and said
action was contrary to, and in violation of, the applicable pro-
visions of "Sec. 125 - Withdrawal of Action after Counterclaim"
and "Section 299 - Proceeding upon Motion" of the "Connecticut
Practice Book."

a. In permitting the Third-Party-Defendant to withdraw
its counterclaim against the appellants inasmuch as
the Third-Party-Defendant's motion, for Summary Judgment
dated March 2, 1976, involved genuine issues of fact,
and the motion was not thereafter heard, and adjudicated
in accord with the required procedural process as set
out in Section 299 of the "Connecticut Practice Book."
as involving "Sec. 297. Summary Judgments."

b. In permitting the Third-Party-Defendant to withdraw its counterclaim against the appellants, and as following appellants' detailed answer thereto, and as allowed over the objections of the appellants, the Court thereby arbitrarily and capriciously paved the way for its ultimate finding, and in violation of "Section 125 - Withdrawal of Action after Counterclaim" of the "Connecticut Practice Book." : "and therefore, there is nothing for this Court to try."

c. The Court's decision was arbitrary, and capricious and deprived appellants of due process.

d. The Court's subject decision constituted an erroneous conclusion of law, and was in violation of the applicable general statutes of the State of Connecticut, supra.

6. In denying appellants a timely hearing on various motions, etc. hereinafter identified, prior to the Court's ultimate finding, : "And therefore, there is nothing for this Court to try."

The said motions, supra, being identified as follows:

a. Defendants' and Third Party Plaintiffs' (Pfotzers') MOTION, BRIEF AND AFFIDAVIT FOR REARGUMENT AND RECONSIDERATION OF THEIR MOTION TO AMEND ANSWER DATED 6-18 -73. (Served Oct. 11, 1975).

b. "Defendants' and Third Party Plaintiffs' Motion to Restore Both Plaintiff's Primary Action and Third Party Defendant's Cross-Complaint Against Plaintiff to the Court's Docket - (Dated December 13, 1975) including Appellants' Comprehensive Memorandum and Affidavit in Support.

- c. Third-Party-Defendant's (City of Norwalk's) "MOTION FOR SUMMARY JUDGMENT" - dated March 2, 1976.
- d. Third-Party-Defendant's (City of Norwalk's) constructive motion for "Withdrawal of Counterclaim."
- e. The Court's decision,: "And, therefore, there is nothing for this Court to try.", without hearing the subject motions, (despite appellants' prior repetitive requests and exceptions) as required by the applicable provisions of the "Connecticut Practice Book" was arbitrary, capricious, and an abuse of discretion, and a denial of due process.

7. In summarily denying, on April 1, 1976, appellants' "Motion to Reargue" dated March 23, 1976, as sought to bring the Court's attention to specific facts involving documents previously filed in the action for timely repetitive consideration, and as materially involved in the Court's prior rulings, and which if timely (in normal progressive sequence) had been given their due normal procedural consideration would have precluded the Court's ultimate finding, quote, "And therefore, there is nothing for this Court to try."

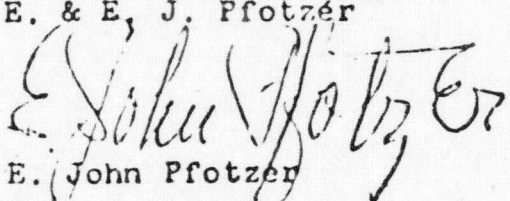
- a. The Court's subject decision in the circumstances was unreasonable, arbitrary, and an abuse of discretion. N.B. Appellants correlatively state that they are presently awaiting receipt of the list of the Clerk's record of various rulings, decisions, judgments, orders, etc. as were duly requested by appellants' letter dated April 3, 1976, and appellants accordingly, must now necessarily reserve their right to amend the aforesaid "Assignment of Errors", inasmuch, as potentially, other erroneous rulings, etc. may well be found

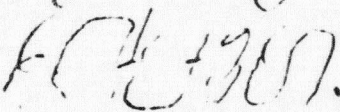
SEC.8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL

82a

cumulatively incorporated in the course of the Court
having reached its ultimate conclusion herein, quote,
"And, therefore there is nothing for this Court to
try."

Respectfully submitted,
Appellants (Defendants and Third
Party Plaintiffs),
E. & E. J. Pfozér


E. John Pfozér


Edmond Pfozér

Service in accordance with Section 80 of the Connecticut Practice
Book is hereby certified.

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76
*** TO SET ASIDE STIPULATION OF DISMISSAL

No. 14326

AMERCOAT CORPORATION

vs.

TRANSAMERICA CORPORATION,
ET AL

SUPERIOR COURT
(AT STAMFORD)

COUNTY OF FAIRFIELD

OCTOBER 8, 1975

MOTION TO STRIKE FROM THE JURY DOCKET

Now comes the CITY OF NORWALK and respectfully requests the Court to strike the captioned case from the jury docket for the reason that the Third Party Plaintiff, E. & E. J. Pfozter, whose claim it was that this matter be tried before a jury, has waived such claim by reason of its Stipulation in open court, for a trial of all issues to the Referee, a copy of which is attached hereto.

THE DEFENDANT, CITY OF NORWALK

By: _____
Arthur J. Goldblatt, Its Attorney

THIS IS TO CERTIFY that copy
was mailed to all parties of
record this day.

Arthur J. Goldblatt

SEC. 8-PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT 4-20-76-
TO SET ASIDE STIPULATION OF DISMISSAL

No. 14326

AMERCOAT CORPORATION

SUPERIOR COURT
(AT STANFORD)

vs.

COUNTY OF FAIRFIELD

TRANSAMERICA CORPORATION,
ET AL

OCTOBER 8, 1975

MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE FROM THE JURY DOCKET

The City of Norwalk respectfully draws the Court's attention to the Stipulation contained in the attached transcript of proceedings before Judge P. B. O'Sullivan, Referee, in this matter on September 9, 1974. On Page X-1 the Court stated the Stipulation substantially as follows:

"...the parties who are in litigation before me... agree that the various pieces of litigation in the system that is in controversy between you gentlemen are to be given to me to handle and solve, and that the two federal cases...are to be withdrawn because they cover the same matters that I will be called upon to decide."

This statement was agreed to by the City of Norwalk (Page X-1), by Amercoat (Page X-2), and by Mr. Pfoetzer (pp. X-2 and X-3). The Stipulation included an agreement that all positions and issues that any of the parties wished to raise would be admitted. See Mr. Leusin's remarks at Page X-5 and Page X-10.

Pursuant to this agreement the Pfozter brothers withdrew their Federal Court actions.

Subsequently, Judge O'Sullivan withdrew from the case for reasons not connected to the Stipulation. (See attached letter of Judge O'Sullivan dated October 22, 1974.)

A waiver is an intentional relinquishment of a known right. Whether a party has waived his right to a jury trial presents a question of fact for the trial court. Krupa v. Farmington River Power Company, 147 Conn. 153, at 156 (1959). In the present matter the Pfozter brothers agreed to waive their right to a jury trial. Although not explicitly stated in the transcript, it may be surmised that this relinquishment was in return for the privilege of presenting all of their claims, including their counterclaim against Amercoat, to Judge O'Sullivan. The Federal Court actions were withdrawn pursuant to this agreement, and also the litigation did not progress on the jury trial docket for almost a year.

The fact that Judge O'Sullivan personally was unable to hear the matter may not properly be regarded as a reason for discounting the waiver of trial by jury. To hold otherwise would be to recognize that the hearing of a matter before a particular judge can be considered by the Court in the nature of contractual consideration. The situation here, as in the Krupa case, is that a mistrial* developed after the waiver of jury

*Strictly speaking, no mistrial was entered in the referred proceeding before Judge O'Sullivan. Judge O'Sullivan simply refused the reference. A mistrial seems to be as close an analogy as is

trial. In Krupa our Supreme Court upheld the trial court's ruling that the case should not be assigned to a jury upon the retrial.

If the Court agrees that the jury trial has been waived by the above circumstances, fundamental fairness would seem to call for the Pfozter brothers to be accorded the right to present matters raised by their Motion of June 18, 1973, since the Pfozter brothers withdrew their Federal actions in reliance upon this anticipated privilege granted by Judge O'Sullivan.

Accordingly, in the exercise of its procedural powers, the Court is requested to order a trial to the Court of all issues. For the sake of economy of the time of the parties and counsel, it is suggested that the Court first order a trial of the issues concerning the alleged misrepresentations as to the pipe as requested by the City's Motion for Separate Trial filed concurrently herewith.

RESPECTFULLY SUBMITTED,

THE DEFENDANT, CITY OF NORWALK

By:

Arthur J. Goldblatt, Its Attorney

THIS IS TO CERTIFY that copy was mailed to all parties of record this day.

Arthur J. Goldblatt

SEC. 9-PLAINTIFFS' MOTION FOR REARGUMENT TO SET
ASIDE STIPULATION OF DISMISSAL OF 11-11-74

SET

FILED

MAY 24 3 10 PM '76

87a

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
NEW HAVEN, CONN.

FOR THE

DISTRICT OF CONNECTICUT

EDMOND PFOTZER, BY E. JOHN PFOTZER,
HIS ATTORNEY-IN-FACT, AND E. JOHN
PFOTZER, CO-PARTNERS TRADING AS
E. & E. J. PFOTZER,

CIVIL ACTION
NO. B-947

Plaintiffs,

v.

AMERCOAT CORPORATION, AND
AMERON, INC.

May 22, 1976

Defendants.

PLAINTIFFS' MOTION FOR REARGUMENT PERTI-
NENT TO PLAINTIFFS' MOTION OF MARCH 9,
1976, TO SET ASIDE STIPULATION OF DIS-
MISSAL DATED NOVEMBER 11, 1974.

Plaintiffs respectfully move this Court:

For reargument pursuant to the Court's "RULING. . ." file
May 13, 1976, as responsive to plaintiffs' prior motion dated
March 9, 1976, for an order of the Court to set aside the "STIPU-
LATION OF DISMISSAL" dated November 11, 1974, as entered between
the parties herein, on the ground that said "STIPULATION OF DIS-
MISSAL" has been breached by the defendants; and that there has
been a correlative failure of defendants' consideration as stem-
med from defendants' breach; and

(1) That the Court apparently did not reflect said facts
in its opinion and order as dated May 13, 1976; and

(2) That the Court did not fully reflect applicable law
as relevant thereto in its opinion and order as dated May 13,
1976; and

(3) That pertinent and material Connecticut Supreme
18000 10181510'S N

Court decision Bryon v. Reynolds, 143 Conn 456 had not been included in plaintiffs' prior citations; and

(4) That the Court restore the subject case to the active docket; and

(5) That the Court supply such further relief to the plaintiffs as may be just.

For the plaintiffs,

By:

E. John Pfoetzer
E. John Pfoetzer, pro se

E. John Pfoetzer

Edmond Pfoetzer, pro se

CERTIFICATION

This is to certify that a copy of plaintiffs' subject motion dated May 22, 1976 was mailed, certified mail to Maher & Maher, 855 Main Street, Bridgeport, Connecticut, 06603.

E. John Pfoetzer
E. John Pfoetzer

ORDER

The above motion having been heard, it is hereby granted/denied.

The Court, - By:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- -x
:
EDMOND PFOTZER, et al.,
:
Plaintiffs,
:
vs.
:
AMERCOAT CORPORATION, et al.,
:
Defendants.
:
----- -x

B-947

New Haven, Connecticut
April 20, 1976

B e f o r e

Hon. JON O. NEWMAN, U.S.D.J.

SEC.10-TRANSCRIPT OF ARGUMENT 4-20-74 ON
PLAINTIFFS' MOTION TO SET ASIDE STIPULATION

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1 THE COURT: Civil 947, plaintiffs' motion to set
2 aside a stipulation.

3 MR. PFOTZER: Good morning, your Honor. I would, at
4 the outset, say that I regret the plaintiffs have to bring
5 before the Court the subject motion for the Court's order to
6 vacate the prior stipulation of dismissal, as was dated November
7 13th, 1974.

8 The time we requested the dismissal we had no thought
9 that the time would come when we would be before this Court
10 seeking the reinstatement of the original action. The plaintiffs
11 are not before the Court because we have in any sense failed to
12 perform our promises as were set out in the basic stipulation
13 of September 9th, 1974, which had been entered in the Superior
14 Court of Connecticut.

15 The dismissal of 11/11/74 in this court was premised
16 upon the stipulation of September 9, 1974; but we're here solely
17 because the defendants herein have breached the basic stipulation
18 of September 9, 1974 by refusing to perform their promises as
19 required thereunder. Specifically, the defendants have refused
20 to litigate the plaintiffs' original complaint in Civil Action
21 B-947 as was before this Court: that is, to litigate B-947 and
22 Civil Action 14326 as was then pending in the Superior Court of
23 Connecticut.

24 The original litigation in this court was to be
25 accomplished by consolidating plaintiffs' action in this court

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1 with a pending action in the Superior Court, and that by the
2 defendants agreeing that these plaintiffs amended answer and
3 counterclaim as originally filed on July 9th, 1973 in the state
4 under disputed circumstances, would be reinstated under the
5 same original filing date, and the defendants would subsequently
6 respond thereto and as raising any defenses open to them relative
7 to that amended answer and counterclaim.

8 Subsequently, on several occasions, plaintiffs
9 reneged and repudiated their agreement, as contained in the
10 stipulation of September 9, 1974, and thus, defendants breached
11 both the original stipulation entered in the Superior Court of
12 Connecticut and the stipulation of dismissal as entered on
13 November 11th, 1974 in this court, which was solely predicated
14 on the September 9th, 1974 stipulation.

15 Despite defendants' prior breaches. When we sought to
16 have the Court enforce the stipulation of September 9, 1974,
17 in the Superior Court of Connecticut, the Court on March the
18 16th, 1976, ruled that the state referee to whom the reference
19 of Amercoat's primary action in the Connecticut Court had been
20 made, and who had personally joined in the stipulation of
21 September 9, 1974 -- it's shown as Exhibit B of the affidavit --
22 the Court said that the referee did not have the authority to
23 overrule a prior ruling of the Superior Court judge of coordinated
24 jurisdiction. The Court's ruling of March 16th, 1976 was made
25 despite the prior agreement of the parties as entered into on

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1 September 9th, 1974, and as was intended to consolidate the
2 three separate actions then pending in three separate courts.
3 That was the sole purpose of that stipulation.

4 A recital of the said Court's ruling of March 16th,
5 1976 is set out in paragraph two of page two of our Exhibit D,
6 which sets out, in part, these plaintiffs' assignment of errors
7 as involved in their appeal to the Supreme Court of Connecticut.

8 This is being mentioned, your Honor, so that when you
9 review this case, you'll see the exact status, and I won't supply
10 all of the details incidental to it. It is set forth in our
11 papers so you recognize -- will realize the present status of
12 the entire matter and what led to it. It is set forth
13 specifically and in sufficient detail in our papers.

14 THE COURT: What's the basic outline of it? At the time
15 you entered into the stipulation in this court back in November
16 11th, '74 --

17 MR. PFOTZER: Correct.

18 THE COURT: -- that's what you stipulated?

19 MR. PFOTZER: Yes, we did.

20 THE COURT: At that time, you said there was a dispute
21 about a stipulation entered into in the state case?

22 MR. PFOTZER: That was a statement made, your Honor.

23 THE COURT: But you still had a state case pending?

24 MR. PFOTZER: Yes.

25 THE COURT: And in that you had filed a stipulation?

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1 MR. PFOTZER: That stipulation was a forerunner of
2 the stipulation made here. In that state stipulation, it was
3 agreed by all the parties then that we, the plaintiffs here,
4 would take our actions out of this court and out of the Delaware
5 court and consolidate what we had here with that action, with a
6 further proviso that the state referee who originally had
7 proposed this action could hear the entire case, inasmuch as the
8 third party action in the original action was for the jury and
9 it was only the primary part that was forth the court, so that
10 he could hear the entire matter, and there were intertwined
11 inextricably, they should have been heard together, he proposed
12 at that particular time that the parties agree to stipulate
13 that we take our actions out of the federal courts and
14 consolidate it in that particular case.

15 The action that we had here in this court almost
16 identically paralleled our former amended answer and counterclaim
17 entered early in the case, July 13, 1973.

18 So -- but there was a dispute about that. I won't go
19 into it, your Honor, it isn't really material at this point --
20 but so that this case could be consolidated, and in so doing, the
21 same issues that were raised in the prior amended answer and
22 counterclaim would be heard by the referee at that particular
23 time.

24 THE COURT: Well, is that what you stipulated, that the
25 issues would be heard by the referee?

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1 MR. PFOTZER: Yes. So that he could hear all of them.
2 Because at that time he only had control over the court side,
3 and on the third party complaint, that was before a jury. He
4 recognized the whole thing ought to be heard together, all the
5 witnesses assembled at one time, therefore, he made the proper
6 suggestion.

7 All of the parties on that occasion agreed to that
8 stipulation.

9 THE COURT: That he would hear it all as a referee?

10 MR. PFOTZER: Yes, because we would --

11 THE COURT: Then what happened after that?

12 MR. PFOTZER: We would waive our right to jury, that
13 would give him an opportunity to hear it all.

14 THE COURT: All right. Then was there a proceeding
15 before the referee?

16 MR. PFOTZER: No, sir. The proceeding had occurred --
17 the plaintiff had put his case in before the referee before we
18 came to that point, where there's an agreement now that we would
19 withdraw. He had heard that part, that's as far then as he
20 went.

21 Several months later, for reasons unknown to us, he
22 asked for the revocation of his reference. We were not aware of
23 it until the motion had been heard and granted, so the referee
24 is now out of the case.

25 Prior to him getting out of the case, we had this

1 stipulation entered in this court with the idea of implementing
2 the stipulation of September 9th, 1974.

3 THE COURT: Wait a minute. There are still steps
4 I don't understand.

5 MR. PFOTZER: Right.

6 THE COURT: When you say he wanted to revoke the
7 reference --

8 MR. PFOTZER: This is now the referee speaking.

9 THE COURT: Just on his own motion?

10 MR. PFOTZER: On his own motion, yes, sir. He had
11 prior to asking for the revocation of his reference set the
12 continuation of the trial as November 18th, 1974, two months
13 after we had entered into this stipulation. Sometime in
14 between then, he, on his own motion, moved for the revocation
15 of his reference. We were not --

16 THE COURT: You mean, so that he wouldn't be the
17 referee personally, or --

18 MR. PFOTZER: Correct.

19 THE COURT: -- or that the matter wouldn't be before
20 any referee?

21 MR. PFOTZER: At that time, there was no decision made
22 that there would be a referee replacing him, or that anything
23 alternative --

24 THE COURT: Well, did you oppose that?

25 MR. PFOTZER: We did not know of it, your Honor. We

1 didn't receive the notice of it until the day of the hearing.

2 We registered a protest afterwards, your Honor.

3 THE COURT: With whom?

4 MR. PFOTZER: With the court.

5 THE COURT: Superior Court?

6 MR. PFOTZER: Yes.

7 THE COURT: And was that ruled on?

8 MR. PFOTZER: No, sir. I would say, your Honor, just
9 to maintain, to some degree --

10 THE COURT: Well, is it still pending?

11 MR. PFOTZER: I would say in the present status of the
12 case, no, your Honor, and when I go a little bit further, maybe
13 you will get a few of the answers that maybe you are probing for
14 in your own mind.

15 THE COURT: Well, unless I understand that part, I'm
16 certainly not going to understand the rest of it.

17 MR. PFOTZER: Okay.

18 THE COURT: If you are complaining about the fact that
19 the referee didn't proceed with the reference --

20 MR. PFOTZER: Correct.

21 THE COURT: -- and if you complained to the Superior
22 Court about that --

23 MR. PFOTZER: Correct.

24 THE COURT: -- and if you are saying they didn't rule?

25 MR. PFOTZER: I would say they have constructively

1 ruled because they've gone pretty far in the case, your Honor.

2 We had a trial subsequently again on the first part, although --

3 THE COURT: In the Superior Court?

4 MR. PFOTZER: In the Superior Court -- subsequent
5 to that, there was another trial.

6 THE COURT: Was there a judgment entered in the
7 Superior Court?

8 MR. PFOTZER: There was, your Honor. It was vacated.
9 We appealed the judgment, and it was subsequently vacated
10 because we thought that there was an erroneous construction
11 of the applicable law.

12 THE COURT: The Supreme Court vacated it?

13 MR. PFOTZER: They stopped it short of that, your Honor.
14 I had the papers all in there filed and everything else, and
15 then suddenly after a hearing, a brief hearing, the judge who
16 had made -- come to that judgment vacated his former judgment,
17 so there is no judgment.

18 THE COURT: The Superior Court vacated --

19 MR. PFOTZER: Vacated its own judgment, yes, sir.

20 THE COURT: Well, aren't you back in the Superior
21 Court now?

22 MR. PFOTZER: No, there were developments thereafter.
23 A trial of the action was later scheduled for the first of the
24 year. It was postponed to March the 2nd. March the 2nd, there
25 were quite a few pretrial conferences, I would say, I would call

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1 them, although we were supposed --

2 THE COURT: Well, without all the detail, has there
3 been a judgment in the Superior Court?

4 MR. PFOTZER: No, sir. Only --

5 THE COURT: And the action is still pending?

6 MR. PFOTZER: No, sir, only to this degree, if I may
7 explain --

8 THE COURT: Neither situation is so?

9 MR. PFOTZER: There is no judgment because the same
10 judge who had participated in the trial of the case on July 24th,
11 1975 said, after he had made certain observations, "There's
12 nothing for me to try. There can be no hearing at this point."
13 His words are stated in my papers, "There is nothing for me
14 to try."

15 THE COURT: Well, did he dismiss the complaint?

16 MR. PFOTZER: I asked him that question. He said,
17 "I'm not dismissing the complaint. There is nothing to try."
18 And the understanding was that that was the end of it.

19 THE COURT: What do you mean the understand was?
20 Whose understanding?

21 MR. PFOTZER: Well --

22 THE COURT: Yours?

23 MR. PFOTZER: No.

24 THE COURT: Well, there hasn't been an understanding?

25 MR. PFOTZER: Prior --

1 THE COURT: What's the status of that case? Is it an
2 open case?

3 MR. PFOTZER: It's on appeal right now, your Honor.

4 THE COURT: Oh, it's on appeal?

5 MR. PFOTZER: Yes, yes.

6 THE COURT: Well, what am I doing with it?

7 MR. PFOTZER: Excuse me?

8 THE COURT: What am I doing with it?

9 MR. PFOTZER: You are doing this, your Honor --

10 THE COURT: In other words, you are taking the appeal?

11 MR. PFOTZER: Yes.

12 THE COURT: You are urging the state Supreme Court to
13 correct what you think is an error by the state Superior Court,
14 is that right?

15 MR. PFOTZER: I'm doing that because --

16 THE COURT: Well, now, never mind because.

17 MR. PFOTZER: Constructively, we're out of court, so I'm
18 appealing, but nevertheless --

19 THE COURT: And you are urging the state Supreme
20 Court that the ruling of the state Superior Court judge was
21 in error, is that right?

22 MR. PFOTZER: Yes.

23 THE COURT: And if you prevail, won't it go back to
24 the Superior Court?

25 MR. PFOTZER: If we should prevail, your Honor, but

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1 I'm very doubtful that we are going to prevail, not because
2 I don't have belief in our case in any way, but I recognize that
3 when the lower court makes a decision, in the parlance of the
4 day, you have two strikes against you. I'm not waiting for one
5 year from now to attempt to get back in this court where I belong
6 as a result of the --

7 THE COURT: Well, now, wait a minute. You entered
8 into a stipulation in this court.

9 MR. PFOTZER: Correct.

10 THE COURT: And you said, "We will litigate over there
11 in the Superior Court."

12 MR. PFOTZER: Yes.

13 THE COURT: Now, something has happened in the
14 Superior Court after a long set of proceedings, and you think
15 it is erroneous, you are taking an appeal?

16 MR. PFOTZER: Correct.

17 THE COURT: Now, if you are right on your appeal, you
18 are going to get some relief; if you are wrong on your appeal,
19 why, isn't it just a situation where a party agreed to go to
20 the state court and got a decision he doesn't like?

21 MR. PFOTZER: There was no decision. No hearing on
22 their merits whatsoever.

23 THE COURT: Well, that may be, but apparently the
24 Superior Court judge thought he didn't need to have a hearing,
25 and you disagree with him.

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1 MR. PFOTZER: Well, your Honor, may I go a little bit
2 beyond this point so maybe there will be some enlightenment
3 come in here why I'm seeking the benefit of this Court's
4 consideration of the breach of that stipulation that was made in
5 this court on the basis that the defendant in this court would
6 litigate that action in that court? He has refused to do so.
7 And the court, when I sought enforcement of it, said, "All we
8 can tell you is that the referee did not have the authority
9 to sanction and participate in that stipulation." This was
10 their answer. And we said, "Here all the parties have agreed."
11 It is very clear each one in that stipulation said they agreed
12 to it.

13 Now the defendant refuses, and the court here says
14 it will not enforce the stipulation because the referee did not
15 have the authority neither to suggest the stipulation, to join
16 or enforce --

17 THE COURT: I don't understand why you are urging all
18 that on me. If you think something improper happened in the
19 state court action, your remedy is to appeal it.

20 MR. PFOTZER: I wonder, your Honor, if that would be
21 the only appeal -- only reason. We had a stipulation here that
22 was made in this court conditional upon the same defendant in
23 this court to litigate the action in the state court. He has
24 refused to do that. Let us look at it this way, your Honor,
25 and I am saying this, if the defendant in this case --

1 THE COURT: Who is the plaintiff in the state court
2 action?

3 MR. PFOTZER: Amercoat. He has withdrawn his action
4 against us, your Honor, for a detail. The city of Norwalk has
5 withdrawn its cross complaint in a third party action against
6 Amercoat. There has been an understanding between the two.

7 Our interests, however, have been left out. Unless we
8 would have a counterclaim in the original action, we cannot compel
9 the litigation in the state court.

10 Now, our counterclaim was involved in the amended
11 answer and counterclaim, which is not and was not being litigated
12 in the state court.

13 THE COURT: Well, this stipulation doesn't, on its face,
14 purport to bind the parties to do anything. It just says that
15 it is being dismissed, the action here is being dismissed,
16 without prejudice to the prosecution of such claim as is
17 presented in Civil Action 4768 and the federal action in the
18 Superior Court.

19 MR. PFOTZER: I comprehend that. The same party,
20 your Honor, Amercoat --

21 THE COURT: In other words, it was dismissed here with-
22 out prejudice to the state court action, the parties were free
23 to do whatever they wanted to do in the state court action?

24 MR. PFOTZER: It was predicated, your Honor -- the
25 same party in this action is the identical party in the state

1 action. They were not in the state action, the same party here,
2 agreed that they would litigate that action.

3 THE COURT: Where does it say that in the stipulation?
4 Show me that.

5 MR. PFOTZER: Not in the stipulation you have, your
6 Honor. I understand what you are saying at the present time.

7 THE COURT: That's the stipulation you want me to set
8 aside?

9 MR. PFOTZER: I want to set aside the stipulation in
10 this court now for this reason, your Honor: that when the
11 defendant signed the stipulation in this court, as premised on
12 the first one, it knew that it was not going to honor the
13 stipulation in the state court, which this stipulation was
14 predicated upon. It induced us to agree to dismiss this action
15 with the knowledge on its part that it did not intend to litigate
16 the action in the state court.

17 Therefore, we're saying to this Court there was fraud,
18 your Honor, in the inducement of this stipulation before this
19 Court because it knew -- the same party in the state court --
20 that it was not going to litigate the action in the state court.

21 If we had known that they were going to repudiate the
22 agreement, that if there was fraud in the inducement, as we see
23 the picture today, certainly, we would not have taken this case
24 out.

25 Now, was that the risk on our part, that we should have

1 known that possibly the defendant was going to induce the
2 agreement by fraud and not do what the same person said it was
3 going to do in the state court, litigate the action?

4 THE COURT: Wait a minute. Unless you can show me
5 what clause you rely on, I don't see anything in the stipulation
6 for dismissal that was filed in this case whereby any party
7 represented that it was going to do anything in the state court.

8 MR. PFOTZER: It represented that it would permit the
9 litigation by the understanding of a prior stipulation that they
10 were going -- we were going to litigate in the state court the
11 action that we had --

12 THE COURT: Where did any party undertake to do any-
13 thing in the state court?

14 MR. PFOTZER: Your Honor, I think that I will have to
15 say at this juncture that there's such a thing as implication,
16 and I am talking about implication right now. I can't say to
17 you: and we hereby agree. I say the implication in the third
18 paragraph of the stipulation shows the intention of these
19 parties to take this out of the court, and it was done in reliance
20 upon the stipulation contained in 14326 as to which these -- the
21 parties are in dispute as to those terms of that stipulation.
22 It was the understanding in the stipulation in 14326 that the
23 parties were going to take the action out of this court and
24 litigate in the Connecticut court.

25 THE COURT: You say Amercoat is the plaintiff over

1 there?

2 MR. PFOTZER: Yes, sir.

3 THE COURT: Well, it's a novel situation if -- where
4 a defendant complains because a case is dismissed without
5 prejudice, and the plaintiff declines to sue the defendant.

6 MR. PFOTZER: Say that again, it's an unusual situation
7 when? Say it again, will you please, your Honor?

8 THE COURT: You say you are the defendant over there?

9 MR. PFOTZER: Yes, but we are the third party
10 complainant over there. Against the City of Norwalk, and the
11 City of Norwalk --

12 THE COURT: Well, go ahead and sue them. Go ahead
13 and sue them.

14 MR. PFOTZER: Sue who?

15 THE COURT: Whoever you are suing in your third party
16 complaint.

17 MR. PFOTZER: We cannot sue there, because they have
18 withdrawn a counterclaim, much less against us, and the court
19 has said, "Well, they've withdrawn their counterclaim" -- follow
20 this, now, your Honor -- Amercoat withdrew its suit against us,
21 we fought that we didn't want the withdrawal of that suit, there
22 was a collusive agreement between the city, who was a third
23 party defendant, and Amercoat.

24 You'd have to know, maybe this small basis of the suit.
25 The city told us to order certain pipe, directed us to, we had

1 no --

2 THE COURT: I don't want the merits of that claim.

3 MR. PFOTZER: Okay.

4 THE COURT: That's what you agree to tender to the
5 state court. Let the state court hear. Is that your view
6 of the situation?

7 MR. PFOTZER: Let me carry on. Amercoat said to the
8 state court, after we had two trials, "We withdraw our
9 complaint against Pfozter," ourselves. In a third party action,
10 the city, who had a cross complaint against Amercoat, said, "We
11 withdraw our cross complaint against Amercoat." This was
12 after six and a half years of litigation.

13 THE COURT: That doesn't concern you, whether two other
14 parties settle their differences.

15 MR. PFOTZER: It will when you hear the rest of it.

16 THE COURT: Well, try to stay with the part that
17 concerns you.

18 MR. PFOTZER: I'm doing that. Then the city said,
19 "We withdraw our counterclaim against Pfozter," so there was
20 no counterclaim against us. All that we had was a suit then for
21 judgment plus costs.

22 THE COURT: Against whom?

23 MR. PFOTZER: The city.

24 THE COURT: And did you press that suit?

25 MR. PFOTZER: Yes.

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1 THE COURT: Did you win or lose? ,

2 MR. PFOTZER: Never came to trial.

3 Let me go a little bit further, your Honor. You have
4 to see this, I didn't create the situation.

5 So we said to the court, "You cannot say there's
6 nothing here to try." True, the city has withdrawn its
7 complaint against us. We had a suit against them over -- we
8 asked them to come in and defend this suit, which was strictly
9 theirs. They refused. We also had them there indemnity for
10 all legal costs and expenses.

11 Now, your Honor, you can't dismiss this. We have been
12 here -- this need for indemnity, there will be no indemnity.
13 I'm speaking now as the court spoke to me, and there will be
14 no costs assessed against either of the parties. That's again
15 part of the appeal.

16 THE COURT: And all that's on appeal?

17 MR. PFOTZER: Yes.

18 THE COURT: And you are saying that the Superior Court
19 judge was in error?

20 MR. PFOTZER: I'm saying it was in error all down
21 the line.

22 THE COURT: All right.

23 MR. PFOTZER: But now I go beyond that, in this respect:
24 I'm saying that we ought to have, to my opinion, the right to
25 come back to this Court with our case, because we say there was

1 fraud in the inducement of this agreement, your Honor. That we
2 have -- the stipulation in here. That -- the defendant in this
3 case, who said when he accepted that stipulation, "We will
4 litigate in this 14326," never intended to do that.

5 THE COURT: How can you complain because he's not suing
6 you? Most people are delighted when they're not sued.

7 MR. PFOTZER: Your Honor, you don't want to hear the
8 details, but I would have to tell you that we have a suit for
9 over \$50,000 against the City of Norwalk in a third party
10 complaint.

11 THE COURT: Where's that claim? In what court?

12 MR. PFOTZER: Same case, 14326, in the Superior Court.
13 But the Superior Court judge said to us: "Inasmuch as the City
14 of Norwalk has withdrawn its counterclaim against you, and your
15 claim against the City of Norwalk was based on a judgment, any
16 judgment you'd have to pay, would be carried over to the City of
17 Norwalk. But the plaintiff has released you, Pfozter, from any
18 suit in the original action. Therefore, you have no claim over
19 against the City of" --

20 THE COURT: They rejected your claim?

21 MR. PFOTZER: Excuse me?

22 THE COURT: Is that what happened?

23 MR. PFOTZER: What's that?

24 THE COURT: They rejected your claim.

25 MR. PFOTZER: No, your Honor, there was no trial.

1 THE COURT: Well, there doesn't always have to be a
2 trial.

3 MR. PFOTZER: Well, you say they rejected our claim.
4 How did we get the rejection of the claim, your Honor? The
5 plaintiff, Amercoat, says, "Pfozter, I should have sued you
6 the first place. I found it out after six and a half year. I
7 withdraw the action."

8 We attempted to avoid that under the statutes of
9 Connecticut. I'm familiar with the laws, but the judge would
10 not listen to that, so they said, "We withdraw our complaint."
11 In the original action. In the third party complaint, the City
12 of Norwalk had a cross complaint against Amercoat --

13 THE COURT: Please, you've been over that already.
14 That's a claim between two other parties. Who is your claim
15 against in the state court? Which parties?

16 MR. PFOTZER: Against the City of Norwalk, and through
17 an amended answer and counterclaim that we had in this court,
18 against Amercoat. So we had a claim against Amercoat through the
19 amended answer and counterclaim.

20 They promised to litigate what we had here in that
21 action. Then they repudiated that agreement. I attempted to
22 have the court enforce the stipulation that was made in that
23 court. Do you follow that so far?

24 THE COURT: And the court apparently didn't agree
25 with you?

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1 MR. PFOTZER: Didn't agree with me. The stipulation
2 says -- they said the judge didn't have authority to sanction
3 that stipulation nor participate in it. He said we all agree --
4 that includes myself -- in the first page of Exhibit B you'll
5 find those words.

6 Now, I think you have been getting too much in the way
7 of information, your Honor, and it's not because I have it
8 twisted, but because this is a most unusual situation, and I
9 will just try to answer your last question: "Who do you have
10 a claim against?"

11 We had a claim against two parties. Number one, we had
12 a counterclaim against Amercoat, which the court will not
13 recognize now in that court, because for the first time, March
14 the 16th, he said the referee in that action did not have the
15 authority to propose or participate in it. I cannot recognize
16 his authority. Therefore, the agreement that you had in that
17 stipulation cannot be enforced by this court.

18 That came after Amercoat had refused to answer amended
19 answer and complaint that it had said it would in the stipulation
20 entered in the other court.

21 Now we come to this point. Before this Court, we had
22 the same complaint that we had in our counterclaim, and we were
23 going to prosecute it here. The same defendant here had
24 promised to litigate it in that court. Same ones. No difference.

25 Now, when the judge said, "Why don't you fellows bring

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1 it all in here?", we concurred. It is in the Exhibit B that you 111a
2 have before you. The concurrence is all set out.

3 Now, to impliment that, we came to this Court to
4 discharge our part therein. And we then agreed to take it out of
5 this court. But it was impliedly condition, we thought
6 expressly, taken it out of here so we could litigate it in that
7 court.

8 Now we're saying, your Honor, that the defendant never
9 intended to litigate that action in accord with a stipulation
10 that he had agreed to in that court. Whatever way that he would
11 maneuver to make sure that that wasn't to be litigated, he did
12 those things.

13 THE COURT: But he was the plaintiff.

14 MR. PFOTZER: Who? We're -- down there -- we're
15 trying to get that litigated. Here he was a defendant.--

16 THE COURT: I know, but over there he's the plaintiff.

17 MR. PFOTZER: Right .

18 THE COURT: And you are complaining because he didn't
19 press his claim against you?

20 MR. PFOTZER: No, sir, because we didn't get an opportu-
21 nity to put the complaint that we had in this case into litigation
22 down there. We did not get that opportunity -- so we're
23 complaining --

24 THE COURT: That's because of a ruling of the state court,
25 for whatever reason, that they weren't going to grant you relief

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1 on your counterclaim.

2 MR. PFOTZER: I will say that was belated. Prior to
3 that time --

4 THE COURT: Well, whether it came later or not --

5 MR. PFOTZER: Well, it may have some significance,
6 because we're saying it was fraud inducement. They promised that
7 they would litigate that action, they refused then to litigate
8 that action and carry it out.

9 THE COURT: But whether they litigated their claim
10 against you doesn't seem to have anything to do with whether your
11 counterclaim against them is a good counterclaim, and that's why
12 you are out of court over in the state court, because the state
13 court decided you don't win on your counterclaim.

14 MR. PFOTZER: Oh, no, it wasn't that, your Honor.

15 THE COURT: Well, they didn't decide you did win?

16 MR. PFOTZER: What they said was because he did not
17 have the authority -- now, if we had entered into a stipulation
18 in good faith before the court and all the parties agreed, and
19 one of the parts of that stipulation was take it out of this
20 court, we took it out in good faith, we thought it was going to
21 be heard.

22 Now, the court disregards a stipulation, and we won't
23 go into the law whether they have a right to do it or not, a year
24 from now we may find they had no right, but in the meantime, we're
25 going to be hurt waiting for a trial.

1 Now, let me say this, your Honor. We have a different
2 situation, complex, but I think it isn't too difficult to
3 understand maybe the basic elements that I'm speaking of. It
4 wan't we that said to the court, the referee, we want to withdraw
5 our action; we had been pressing to try to have a hearing. It
6 was on that court's suggestion that we do this very thing. We
7 thought that the court knew what its own authority was. And that
8 we didn't have to question, your Honor, you have a right to
9 propose this agreement, you know that it will be recognized.

10 It wasn't only we that thought we had a bona fide
11 agreement. If you will look at the last exhibit you have in our
12 affidavit, you will see where in 1975, September 8th or October
13 8th, the city was saying the court down there, when we're getting
14 nigh to a hearing, your Honor, there cannot be a jury trial.
15 Pfotzer promised to waive his right to a jury trial. This is
16 only a detail, your Honor.

17 THE COURT: That's not before me, whether you get
18 a jury trial in the state case.

19 MR. PFOTZER: But it is important in this sense, that
20 they then set out that each party to that affidavit had agreed,
21 and they mentioned precisely the page on which each party had
22 agreed to it, so we were acting in good faith,-- if you can see
23 that picture -- acting in good faith before that court, thinking
24 the court had that authority.

25 Now, two years later, without the plaintiff advocating

1 the action, the Court, after two days consideration -- first
2 it said, "Oh, the stipulation is in here. There will have to
3 be a trial." And gradually the Court moved away from it, and
4 on the second day, the Court said, "After more consideration, the
5 Court concludes that the referee did not have the authority to
6 propose or sanction or participate in that agreement." Therefore,
7 we are saying that the amended answer and counterclaim is not in
8 this case. When the amended answer and counterclaim went out of
9 that case, if it ever were in, the judge followed it up shortly
10 with saying, "Well, if the plaintiff has withdrawn the complaint
11 against you, Pfozter, and if the city has withdrawn its counter-
12 claim against the plaintiff, and the only right that you have now
13 left, inasmuch as you don't have an amended answer and counter-
14 claim in the first suit, would be your third party complaint against
15 the city. I can't hear that, because your original third
16 party complaint was any judgment that you'd have to pay would
17 have to be paid by the city."

18 Now, your Honor, read down a little bit farther where
19 we say: including all legal cost that we have to expend, so we
20 say you haven't got a case, there's nothing for me to hear, and
21 that's it.

22 THE COURT: And you are appealing that decision?

23 MR. PFOTZER: All of them.

24 THE COURT: Isn't that right?

25 MR. PFOTZER: Five of them.

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2 THE COURT: All right. If you are right, if he made a 115a
3 mistake, your suit is going to be reinstated; and if he's correct,
4 then you agreed to go into the state court and you lost.

5 MR. PFOTZER: You are not trying to argue with me,
6 your Honor, but I say this, to you, was there a hearing on the
7 merits in your mind? You went into the state court, you lost.

8 THE COURT: I haven't the slightest idea if there was a
9 hearing on the merits, and I don't see what difference it makes
10 to this case in this court. If they dismissed you without a
11 hearing, and you are taking an appeal, one of two things is going
12 to happen. Either the state Supreme Court is going to say the
13 judge was right, or he's going to say he was wrong.

14 MR. PFOTZER: Correct.

15 THE COURT: If he was right, you are bound; if he was
16 wrong, you are going to get some relief.

17 MR. PFOTZER: Right. Now, I'm saying, your Honor,
18 that this Court, under these circumstances, may be in a position
19 to give me relief regardless of what the state court, whether --
20 what it does, whether it ultimately rules for us or against us,
21 I say that there is -- that this Court has a right to look at
22 the stipulation that was entered into before this Court, a
23 stipulation that withdrew the action that was predicated on the
24 intentions of the parties, if there was, in fact, as the develop-
25 ment seemed to indicate, a fraud in the inducement that these --
this plaintiff here was induced to take his case out of this

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1 court where he had an excellent opportunity of getting a hearing. 116a
2 He took it out on the promise of the same party in the lower
3 court in Connecticut Court to litigate it, and he never had the
4 intention of litigating, so, therefore --

5 THE COURT: That's nowhere recited in this stipulation.

6 MR. PFOTZER: Excuse me?

7 THE COURT: It is just nowhere recited in this stipula-
8 tion that he promised you he was going to sue you.

9 MR. PFOTZER: Excuse me?

10 THE COURT: It is just nowhere recited here that he
11 promised you he was going to sue you.

12 MR. PFOTZER: No one says that he promised he was going
13 to sue us. He was going to permit our complaint to go in there
14 so we could sue him, and he has thwarted that purpose.

15 You comprehend the situation here, your Honor,
16 because that last question would indicate --

17 THE COURT: Let me hear from the other side. I've
18 heard you now for forty minutes. You've filed a long brief,
19 and I have got to hear a little bit from the other side.

20 MR. PFOTZER: Right, your Honor. It didn't seem like
21 forty minutes.

22 MR. MAHER: Your Honor, let me start off by saying
23 I'm not going to take exception to some of the remarks Mr.
24 Pfozter made concerning his allegations of fraud and inducement.
25 I hope that they weren't directed against me.

1 This is a confusing situation, as the Court has
2 pointed out. I think originally, your Honor, we have to go
3 back to the original state court action, which was an action
4 instituted on a book debt by the defendant Amercoat, Cameron
5 against a bonding company, Transamerican Insurance Company and
6 against Mr. Pfozter and his brother, Edmond Pfozter.

7 At that time, the Pfozter's -- as I understand the
8 situation, I was not a party to this proceeding -- filed a
9 counterclaim for indemnification against the City of Norwalk.
10 The City of Norwalk, in turn, filed a cross complaint against
11 the original plaintiff, Cameron, Amercoat, again, I believe,
12 sounding in indemnification.

13 These actions were instituted sometime in 1969 in the
14 Superior Court in Stamford.

15 In June of 1973, the pro se defendants, third party
16 plaintiffs, filed an application with the Superior Court to
17 amend their original answer to assert a special defense and
18 a counterclaim. That came before Judge Tunic on the short
19 calendar in Stamford, and Judge Tunic denied the motion to assert
20 a counterclaim. There was no written decision, to my knowledge,
21 other than application or a motion to amend, the counterclaim
22 denied.

23 Thereafter, the defendants, plaintiff in this action,
24 Mr. Pfozter, brought an action in this court and in the District
25 Court of Delaware against Amercoat, attempting to set forth the

1 counterclaim that he had been already -- been denied the right
2 in the Superior Court.

3 Then I understand that there was a hearing before
4 Justice O'Sullivan sometime in September of 1974. At this time,
5 the actions in Delaware and in this court were still pending.
6 It is Exhibit A in Mr. Pfozter's brief.

7 Mr. Pfozter claims that a stipulation was entered into.
8 If the Court will read the last several pages of that transcript,
9 the Court will note that Justice O'Sullivan at that time said that
10 a written stipulation by all parties must be entered. That
11 stipulation was never reduced to writing. Because none of the
12 counsels and Mr. Pfozter could get together as to what this
13 stipulation was.

14 Simultaneously, or during this period of time, the
15 District Court action in Delaware and the District Court action
16 in Connecticut are withdrawn.

17 There's a stipulation for dismissal with prejudice
18 which has been executed by the pro se plaintiffs and the defendant.

19 We now jump ahead approximately a year, and we get to
20 sometime in December of 1975 when, as Mr. Pfozter has pointed out,
21 the original action is withdrawn for the book debt. The counter-
22 claim also -- or the cross complaint of the City of Norwalk
23 against Amercoat is also withdrawn.

24 We now come in to March of 1976 when -- we're down
25 before Judge Harold Dean, and Mr. Pfozter at that time is

1 attempting to assert his counterclaim, again on the basis of a
2 purported stipulation entered into before a state referee.

3 It did take a little bit more than two days, as Mr.
4 Pfozter has indicated, it took a period of approximately two
5 weeks, because, as the Court can most likely appreciate, this
6 file is voluminous, and Judge Dean had to read the entire file.

7 He ruled at that time that no stipulation had been
8 entered into. He also ruled that Mr. Pfozter -- I'm not sure
9 of this ruling, but he had also indicated that Justice O'Sullivan
10 had, in fact, revoked the reference, and it was, therefore, in
11 front of Judge Dean. Judge Dean indicated there was no
12 stipulation.

13 From that decision an appeal has been filed by Mr.
14 Pfozter, and I think that's where we are, your Honor, we're back
15 here. He is attempting to reopen a stipulation for dismissal
16 and, yet, he is taking appeal in the state court.

17 And I understand, your Honor -- maybe this might not
18 be germane to the issue -- I also understand he has filed the
19 exact same motion that is before the Court now in the United
20 States District Court of Delaware, where I believe Senior Judge
21 Steel -- and I also believe that they've had a hearing on that.
22 What the results --

23 THE COURT: What judgment of the state Superior Court
24 that's on appeal?

25 MR. MAHER: The judgment, as I understand this, your

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1 Honor -- the judgment of the state Superior Court is whether or
2 not the court erred in not allowing Mr. Pfozter to assert a
3 counterclaim. The counterclaim is basically word for word
4 identical to the present controversy. The state court has
5 already ruled it is not an element of that case, the case in the
6 state court, and that decision is on appeal.

7 THE COURT: Is that judgment part of this file?

8 MR. MAHER: That, I cannot answer, your Honor. I
9 don't believe that it is. But there are several of the papers
10 which Mr. Pfozter has -- weeks past, have indicated that the --
11 well, dated April the 13th, 1976 -- defendant and third party
12 plaintiffs appeal. It's right here, your Honor.

13 THE COURT: Does that recite the judgment?

14 MR. MAHER: It includes a variety of things, your Honor.
15 It also -- including an assignment of errors.

16 THE COURT: What's that attached to?

17 MR. MAHER: This is not attached, this is something
18 that I received, your Honor, and -- Mr. Pfozter's sending these
19 to me and -- as the state court is right now, I'm not a party to
20 that case. But I'm getting all of these pleadings.

21 This is a letter dated April 13th to the Clerk, your
22 Honor, and a variety of other documents. I don't believe it's a
23 part and parcel of any record which has been submitted to you.

24 I'm sorry, your Honor, in the brief which was submitted
25 by Mr. Pfozter, which is received by me, I believe, yesterday,

1 the last attachment, is, in fact, the indication of the
2 defendants' appeal.

3 THE COURT: All right. So is your view that what's on
4 appeal in the state court, among other things, is the state
5 court's decision to deny permission to file the counterclaim?

6 MR. MAHER: That is correct, your Honor.

7 Now, I will say this, also, that subsequent to Judge
8 Tunic's ruling, refusing to allow Mr. Pfozzer to put in the
9 counterclaim, that portion was also appealed to the Supreme Court.
10 However, the Supreme Court held that that was interlocutory in
11 nature and didn't rule on it. So now we're back where we were.

12 Your Honor, that is an attachment, I believe, to the
13 brief submitted by Mr. Pfozzer, dated April 13th in this action.
14 It does include the indication -- I believe, the indication
15 of the appeal. I don't know what exhibit it is, but it's
16 contained in there someplace, towards the rear of the submissions.

17 THE COURT: Yes. All right.

18 MR. PFOTZER: May I respond briefly, your Honor? Just
19 take a minute, very small item here.

20 Counsel says that he's not in that court there. He
21 made an appearance for Amercoat down in the state court, that's
22 incidental. You asked him if there's a judgment. There's no
23 judgment, your Honor, I think counsel should have known that.

24 We asked the court make a judgment, please tell us what
25 rulings that we'll have to appeal against. We're still waiting

1 for them. There has been no judgment.

2 THE COURT: You are appealing something?

3 MR. PFOTZER: That's right. What we heard, these words,
4 you see them cited in that appeal, the judge finally said,
5 "There's nothing for me to try in this case."

6 THE COURT: You told me that, but you are appealing
7 something.

8 MR. PFOTZER: That's where we stand, your Honor.

9 THE COURT: You are appealing something.

10 MR. PFOTZER: We're appealing that which he said, for
11 example -- that Judge O'Sullivan had not the authority to
12 consider. We've set it out in those papers.

13 THE COURT: Well, you also claim to be appealing the
14 decision to prevent you from filing your counterclaim.

15 MR. PFOTZER: We have seven different points in there,
16 your Honor.

17 THE COURT: And that's one of them?

18 MR. PFOTZER: One of them, your Honor.

19 THE COURT: I don't know how you can ask me to rule
20 while that's on appeal.

21 MR. PFOTZER: Your Honor, what I'm -- despite that, what
22 I'm saying to you, your Honor, is -- and appealing this Court --
23 is that from the developments in that case, we are saying that
24 there is fraud in the inducement of the stipulation signed in
25 this court. Therefore, we're saying as a consequence of the

1 developments that we had witnessed and have been, as I have recited
2 them, that we or -- petitioning this Court to have the dismissal
3 vacated so that we may have, of a surety, our claim litigated
4 in this court, the possibility from the developments that we
5 have seen in the state court are extremely remote, and we would
6 lose the rights that we say we have as a consequence of the
7 fraud and the inducement that prompted us to agree to take
8 this case out of the court. So when you say --

9 THE COURT: But you knew back in '73 the state court
10 had denied you your right to file a counterclaim --

11 MR. PFOTZER: Your Honor --

12 THE COURT: -- isn't that right?

13 MR. PFOTZER: -- I'll have to explain something to you,
14 if you will let --

15 THE COURT: You knew that, didn't you?

16 MR. PFOTZER: No, we didn't.

17 THE COURT: What do you mean you didn't know it? It
18 was a ruling you tried to appeal. How can you say you didn't
19 know?

20 MR. PFOTZER: Will you let me answer that question
21 so maybe you'll hear the response, and I will tell you what it was?
22 We put in a motion in accord with Connecticut practice to file
23 an amended answer and counterclaim. The rule under Section 132
24 of the Connecticut States has three subdivisions. C: that
25 subdivision says that if the other party fails to object within

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1 ten days, that the amended answer automatically becomes a
2 complaint. He did not object until after twenty days, therefore,
3 your Honor --

4 THE COURT: You had a valid counterclaim?

5 MR. PFOTZER: Just a moment, your Honor.

6 THE COURT: Well, please, we've got to get to the
7 points.

8 MR. PFOTZER: I comprehend that, but you were talking
9 to me --

10 THE COURT: Isn't it so that you thought you had a valid
11 counterclaim?

12 MR. PFOTZER: Not only thought, your Honor, I say we
13 have.

14 THE COURT: All right. Isn't it so that the Judge Dean
15 disagreed with you? Is that so? That's a fairly simple question.

16 MR. PFOTZER: On, no, it isn't, your Honor. -

17 THE COURT: Oh, really?

18 MR. PFOTZER: Just a moment. Yes, it is not as
19 simple as you would cast it.

20 THE COURT: Did you try to appeal his dismissal of
21 the counterclaim? That's a fairly simple question.

22 MR. PFOTZER: Yes, on the point of fraud.

23 THE COURT: You tried to appeal it?

24 MR. PFOTZER: May I answer that?

25 THE COURT: Did you try to appeal it?

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1 MR. PFOTZER: Yes, we alleged that he had --

2 THE COURT: All right. Then, you obviously knew the
3 action had been taken against you?

4 MR. PFOTZER: We knew that it was interlocutory, but
5 we also said that he had told the court --

6 THE COURT: All right.

7 MR. PFOTZER: -- Judge Tunic --

8 THE COURT: I don't care about all your arguments as to
9 why you thought.

10 MR. PFOTZER: We appealed, your Honor, we certainly
11 did.

12 THE COURT: All right.

13 MR. PFOTZER: And the court --

14 THE COURT: And that was in '73?

15 MR. PFOTZER: Yes.

16 THE COURT: And you made --

17 MR. PFOTZER: No, in '74, if we're going to get down
18 to dates.

19 THE COURT: When it was dismissed?

20 MR. PFOTZER: No, when it was heard, we appealed
21 immediately after a decision.

22 THE COURT: When was it dismissed by the trial judge?
23 That was '73?

24 MR. PFOTZER: July 20th, your Honor, 1973. The next
25 day we appealed.

1 THE COURT: Was that before or after your stipulation
2 in this court?

3 MR. PFOTZER: Before.

4 THE COURT: All right. That's all I want to know.
5 Thank you very much.

6 I'll reserve decision.

7 MR. PFOTZER: Your Honor, I know that I'm finished,
8 but let me say this: an intimation was made by counsel he's
9 got an action down in Delaware, we could not get the action
10 in Connecticut --

11 THE COURT: I'm not concerned with the Delaware action.

12 MR. PFOTZER: But I'll say this: the intimation is
13 we're suing all over, we could not get him in this court,
14 because they said that he was not a resident. Counsel said that.
15 Later on we found out that they were a resident in this state,
16 but we could get a suit in Delaware.

17 THE COURT: I'm just not concerned with the Delaware
18 action.

19 MR. PFOTZER: You are right, but, your Honor, I'm
20 concerned when either my knowledge or my integrity is imputed
21 by someone that stands before you, and I was trying to
22 exonerate myself. Thank you, your Honor.

23
24 - o o o -
25

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

EDMOND PFOTZER, BY E. JOHN PFOTZER, :
HIS ATTORNEY-IN-FACT, AND E. JOHN :
PFOTZER, CO-PARTNERS TRADING AS :
E. AND E. J. PFOTZER :

VS. :

CIVIL NO. B-947

AMERCOAT CORPORATION AND :
AMERON, INC., etc. :

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